

City of Willoughby Hills

Interoffice Memo

Date: Monday, February 05, 2018

To: Council President Fellows, Council Members and Council Clerk

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

Subject: Veto on Ordinance 2018-3 (amended) Engaging Richard Harmon as Acting Fire Chief – Concern about Legality and Charter/State Law Violation of this Council Action

On January 25, 2018, Council passed Ordinance 2018-3 after waiving the Three Reading Rule and declaring an emergency.

I hereby veto the passage of this Ordinance by Council for the following reasons:

- Mr. Rob Beglin, Vice President of Public Entity Practice, USI Insurance, has provided an email dated 2/5/18 which identifies the fact that contractor Richard Harmon **would not** be covered under the City's policy and, as a subcontractor, would need to provide his own professional liability coverage (minimum of one million dollars per occurrence), medical malpractice and workers' compensation coverage. The Ordinance does not address the fact that the contractor must provide insurance coverage, specifically to this extent.
- Assistant Chief Keith Carrocci of the State Fire Marshal's Office indicated that **even a contractor would need to provide current licensure before acting in this capacity**. The Ordinance does not address credentialing for current licensure whatsoever.
- City Charter Provision 2.11 Duties & Responsibilities – Designates **Mayor's** authority of appointment
- Ohio Revised Code 733.03 – General Powers of Mayor in Cities – Designates **Mayor's** authority of appointment
- City Charter Provision 2.27 Salary Recommendations – Designates **Mayor's** authority for salary recommendation

- City Charter Provision 3.31 Powers of Council – Indicates that Council **does not** have the authority to make this appointment
- Ohio Revised Code 731.05 Powers of Legislative Authority – Indicates that Council **does not have administrative authority**, rather only legislative authority
- City Charter Provision 3.25 The Clerk and Other Employees – Indicates that Council **does not have authority** to contract services of a Department Head
- City Charter Provision 3.32 Fixing of Salaries – Indicates that Council **does not have the authority** to fix a salary of a contractor
- City Charter Provision 9.43 Civil Service – Indicates that the position of Fire Chief (or Acting Fire Chief) is an **unclassified position**, not a contracted position.
- City Charter Provision 5.5 Civil Service Commission – Demands that the Civil Service Commission confirm all credentials.

The specifics of the City Charter and Ohio Law cited above are as follows:

- 1) This Ordinance violates Charter Section 2.11 – Duties & Responsibilities
 “Mayor shall be the chief executive officer and the head of the administrative branches of the Municipal government and shall perform all duties and may exercise all privileges and authority prescribed for him in this Charter, or by the Constitution and laws of the United States and the State of Ohio, including authorities of a judicial nature.”
- 2) This Ordinance violates Ohio Revised Code 733.03 – General Powers of Mayor in Cities – “The Mayor shall be the chief conservator of peace within the city. **He may appoint** and remove the director of public service, the director of public safety, and the **heads of the sub-departments of public service and public safety...**”
- 3) This Ordinance violates Charter Section 2.21 – The Mayor – Duties and Responsibilities - “The **Mayor** shall appoint the heads of all Departments of the Municipality, including, but not limited to the Department of Law, Department of Finance, Department of Public Safety, Police Department, **Fire Department,**”...
- 4) This Ordinance violates Section 3.31 of our City Charter – Powers of Council – “The Council shall enact any and all legislation deemed necessary for the preservation of the safety and welfare of the community and provide for the orderly and desirable growth of the community for the efficient and orderly operation...” The “engaging of Richard Harmon as Acting Fire Chief” could certainly not have been for the “safety and welfare of our community” as the Ordinance does not even provide for proper credentialing to ensure that his licensures are up to date!

- 5) This Ordinance violates Ohio Revised Code 731.05 – Powers of Legislative Authority – “The powers of the **legislative** authority of a city shall be **legislative only, it shall perform no administrative duties and it shall neither appoint...**”

- 6) This Ordinance violates Charter Section 3.25 The Clerk and Other Employees – “The Council shall appoint a Clerk of Council and such other employees of the Council as it deems necessary.” A contracted Acting Fire Chief is **not** an employee of the Council!

- 7) This Ordinance violates Charter Section 3.32 Fixing of Salaries – “Council shall by ordinance fix the salary or compensation of every officer or employee of the Municipality.” This is done upon the Mayor’s recommendation with the authority given to him in Section 2.27. There is nothing in Article III of our Charter to give authority to Council to appoint, except 3.25 which names the Clerk and other such employees of Council. The Acting Fire Chief is **not** an employee of Council.

The above seven points confirm Council violations to policy. **Council does not have the authority to make the appointment of Richard Harmon or any other individual as Fire Chief, or Acting Fire Chief. Council actions are unlawful and are a clear City Charter violation.**

In addition:

- 8) This Ordinance blatantly violates Charter Provision 9.43:

Section 9.4 CIVIL SERVICE

9.43 Police Chief and Fire Chief. The positions of Police Chief and Fire Chief shall be unclassified.

Council’s actions to “engage the services” of a contractor, paid by a 1099, are unlawful and are a clear City Charter violation.

- 9) Section 4 of the Ordinance allows for Richard Harmon to be a “1099” contractor, rather than an employee, which circumvents the City’s Charter policy (Section 5.5):

Section 5.5 CIVIL SERVICE COMMISSION

5.5“The Civil Service Commission shall, prior to an employment offer by the Appointing Authority, review and confirm all credentials stated in the application provided by the candidate for employment by the Municipality, including, without limitation: (i) reviewing and confirming that the employment and educational history of any candidate is correct as stated in such candidate’s employment application, and (ii) that such candidate has obtained and is maintaining in full force any license, certification or other qualification required by the Municipality for employment by the Municipality in the position sought by such candidate.” The City would open itself up to unfavorable circumstances, should the credentialing process **not** be followed and an incident occurred that involved this “uncredentialed contractor.”

After speaking with Assistant Chief Keith Carrocci of the State Fire Marshal's Office, I reaffirmed the importance of our Fire Chief having the required credentials for fire and EMS services, a valid Ohio Driver's license, and insurance coverage. The Ordinance does not provide for any of these "checks", nor does it address Bureau of Workers Compensation insurance coverage. I do not want to put our City in jeopardy of having to pay a Workers Compensation claim or other insurance liability claim on a contractor Fire Chief who never went through the basic steps of credentialing that we hold our employees to by Charter, including a physical examination to assess if he can perform the physical requirements of the job description, or the provisions outlined for contractors in Ordinance 2017-66, which was responsible for "articulating standards and establishing reporting requirements to evaluate the responsibility of public contractors."

Points eight and nine again confirm Charter violations by Council. Council cannot usurp the law, powers and obligations of Civil Service by hiring a contractor to fill an "unclassified position" nor deny proper credentialing by the Civil Service Commission. **Council actions are unlawful and are a clear City Charter violation.**

cc: Finance Director Frank Brichacek
Civil Service Commission

Gloria Majeski

From: Rob Beglin <Rob.Beglin@usi.com>
Sent: Monday, February 05, 2018 10:04 AM
To: Gloria Majeski
Cc: April Valenti
Subject: FW: City of Willoughby Hills

Gloria,

See the response below from the underwriter. Per our discussion, as a subcontracted service provider the new chief would not be covered under the City of Willoughby Hills liability policies. As a subcontractor he would need his own professional liability coverage, medical malpractice and workers' compensation coverage.

As your broker we recommend that subcontractors have a minimum of \$1,000,0000 of liability coverage per occurrence for each line of coverage. Ideally they would have limits equal to the limits of Willoughby Hills.

Let me know if you require any additional information.

Best Regards,
Rob

Rob Beglin
Vice President, Public Entity Practice
USI Insurance
10100 Innovation Drive - Suite 220
Dayton, OH 45342
937-913-1320 Direct
513-290-5296 Cell
800-233-7488 Toll Free
866-972-7405 Fax
51320 VOIP
rob.beglin@usi.com
www.usi.com

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From: Brunett, Pete [<mailto:Pete.Brunett@yorkrsg.com>]
Sent: Monday, February 5, 2018 8:39 AM
To: Rob Beglin <Rob.Beglin@usi.com>
Cc: April Valenti <April.Valenti@usi.com>; Shannon Caudill <Shannon.Caudill@usi.com>
Subject: RE: City of Willoughby Hills

Not a good idea. As a contractor he is not covered under the City's policy. He should have his own professional, and medical malpractice insurance; naming the City as additional insured.

From: Rob Beglin [<mailto:Rob.Beglin@usi.com>]
Sent: Friday, February 02, 2018 4:12 PM
To: Brunett, Pete
Cc: April Valenti; Shannon Caudill
Subject: City of Willoughby Hills

Pete and April,

I need your thoughts on a potential issue with the City of Willoughby Hills. I received a call from the mayor today regarding the Fire Department. The Fire Department has been operating with an Acting Fire Chief for the last couple of months. At last night's council meeting the mayor recommended hiring the acting chief as a full time chief. He has all of the necessary credentials and has been vetted by the city.

The council chose to override the mayors suggestion and bring voted to back a former chief that had retired a few years ago. Instead of hiring him as a full time employee they voted to bring him on as a contractor and pay him a 1099. This gentleman has presented no current credentials to council. The mayor asked if PEP had any issues with the chief being a contractor and what, if any, requirements would we have before he could assume his position.

My biggest concern is the fact that he is a contractor. Should the city require him to show evidence of insurance? And if so what limits? If he doesn't have his own policy would PEP cover him as an insured?

Let me know your thoughts.

Thanks,
Rob

Rob Beglin
Vice President, Public Entity Practice
USI Insurance
10100 Innovation Drive - Suite 220
Dayton, OH 45342
937-913-1320 Direct
513-290-5296 Cell
800-233-7488 Toll Free
866-972-7405 Fax
51320 VOIP
rob.beglin@usi.com
www.usi.com

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