

# City of Willoughby Hills

## Interoffice Memo

**Date:** Thursday, October 12, 2017

**To:** Council President Fellows, Council Members and Council Clerk

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

**Subject:** Veto on Ordinance 2017-70 Due to Concerns on Legality and Ethics

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On Thursday, September 28, 2017, I spent the evening with our injured Police officers following the unfortunate shooting that occurred earlier in the day. I was unable to attend the Council meeting that evening and advised Council that I would not be in attendance. I had read the agenda and legislation in advance and did not see any reason why my not being in attendance may be a concern. I made sure to provide Council with the proposal from Zashin and Rich, who I had hoped would be confirmed by Council to handle the pending Unfair Labor Practice filed by the proposed AFSCME Union through the State Employment Relations Board (SERB).

Later that evening, I learned that Steve Byron had been appointed “Acting Law Director” by Council in my absence. This was very disconcerting to me as it was not an item on the agenda, the Ordinance was not included with the other Ordinances that were to be voted on that evening, and I was not given the respect or consideration as Mayor of the City of Willoughby Hills that it was Council’s intent to act on this in my absence. Mainly, however, my concern about this illegal action by Council is its blatant violation to our Charter and Ohio Law.

I have outlined Council’s violations to Charter and Ohio Law as follows:

- **Mayor’s Authority for the Appointment was Illegally Ignored by Council:**

**Charter Provision 2.11 – Duties and Responsibilities:** “Mayor shall be the chief executive officer and the head of the administrative branch 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.”

**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, and shall have other powers and perform such other duties as are conferred and required by law.”

- **Mayor’s Authority for Salary Recommendations:**

**Charter Provision 2.27 – Salary Recommendations:** “Though Council has the power to fix salaries as defined in Section 3.32, the Mayor shall have the duty and responsibility to recommend to Council the amount of pay for various positions...”

The proposed salary of \$10,000 per month equals to \$120,000 per year, but there are additional rates of hourly representation. The former Law Director’s pay includes retainer, extra billing, litigation, and Union matters was:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Retainer	\$19004	\$26400	\$26400
Non-Retainer	\$26327	\$34631	\$39505
Total	\$45331	\$61031	\$65905

Council’s agreement to pay this individual and the law firm \$120,000 in retainer plus an additional \$250 per hour for non-retainer hours worked (compared to Law Director Lobe’s \$95/hr. non-litigation rate and \$105/hr. litigation rate) will add up to be probably triple the amount we were previously paying, and well over what was appropriated.

- **Council Does Not Have Authority to Make the Appointment:**

**Charter Provision 3.31 – 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 of the local government. The procedures for enacting this legislation shall follow the laws of the State of Ohio and any additional stipulations as found in Article VI of this Charter.”

The “hiring” of Steve Byron as “Acting Law Director” could certainly not have been for the “safety and welfare” of our community as the Ordinance detailing his negotiated retainer responsibilities totally exclude “litigation, negotiations with City Union workers or other matters requiring more than 10 hours per month.”

**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 nor confirm any officer or employee in the city government except those of its own body...”

**Charter Provision 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.”

An “Acting Law Director” or “Law Director” is **not** an employee of the Council!

**Charter Provision 3.32 Fixing of Salaries:** “Council shall by ordinance fix the salary or compensation of every officer and 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 Law Director or Acting Law Director is NOT an employee of Council.

- **Council did not have the authority to appoint Mr. Byron. Also, Mr. Byron admitted that he prepared the Ordinance for Council approval, but he did not have the authority to do so.**

**Charter Provision 4.31 The Law Director:** “The Department of Law shall be administered by a Law Director, who shall be an attorney-at-law admitted to practice in the State of Ohio, and shall be appointed by the Mayor.”

**Charter Provision 4.32 Duties & Responsibilities:** “The Law Director shall prepare all contracts, bonds and other instruments in writing in which the Municipality is concerned...”

**Ohio Revised Code 733.51 Powers & Duties of the City Director of Law:** “The City Director of Law shall prepare all contracts, bonds and other instruments in writing in which the city is concerned...”

In addition to the Charter and State Law violations, I believe a potential illegal violation of Executive Session by this Council transpired based on the following facts:

- There was no copy of the ordinance or draft of the ordinance presented prior to Executive Session.
- When Council voted to go into Executive Session, Council did not name the attendees to be a part of the Executive Session.
- For some reason, without mentioning Steve Byron by name, Steve Byron went in to Executive Session, though not a part of the formal motion.
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- The meeting video in our possession clearly shows the Council Clerk, at approximately 9:43 p.m., place a copy or copies of Ordinance 2017-70 at the Council President's place. The document had the "blanks" filled in, with Steve Byron of Walter Haverfield firm being named on the document. This was while Council was still in Executive Session, where no decision should have been made.

Did Steve Byron go to the Clerk's office to prepare this document when he disappeared from the video? At 10:22 p.m., Council President Fellows returned from Executive Session to her seat, where the completed ordinance had earlier been placed by Council Clerk Savage. At 10:30 p.m., Council President Fellows passed the document to Councilwoman Majka, who passed the document on for distribution to Councilman Fiebig, Councilman Plecnik and Councilwoman Pizmoht. At 10:32 p.m., Council resumed the meeting from Executive Session, with Council President Fellows indicating that "it would be irresponsible not to have legal counsel with so many legal challenges", even though the imminent challenge of the Unfair Labor Practice would not be handled by the representative Council chose (Mr. Byron). After having the contract in his position for a full thirty-seven (37) seconds, Councilman Plecnik put the document down, as if he had read it in its entirety. At 10:34 p.m., Council President Fellows read the ordinance, with Councilman Fiebig immediately thanking her for directing "the Council Clerk to prepare the ordinance for a vote." When did she do this? It was never on the video. Was a decision made in Executive Session? At 10:36 p.m., the Ordinance was adopted, having waived the two-day notification and three-reading rule, just six minutes after Council President Fellows passed the Ordinance to Council to read. I believe Sunshine Laws were violated and the unethical way this was passed is clearly suspect and certainly not putting "Residents First."

- This document was never put on the agenda. When Council recessed to Executive Session, it did not advise the public that another ordinance was being considered. Instead, after a majority of the public left and over 40 minutes of silence are on the tape, Council returns from Executive Session to announce to the "public" that Mr. Byron had been chosen as the City's Acting Law Director.
- While I had provided a contract from Zashin and Rich for Council's review in Executive Session, Council returned to make no mention of consideration of the contract. This recommendation was made to Council to handle the SERB Union matter. The contract (retainer) provided to Mr. Byron would not have handled this matter (as noted in Section 3h), but it would have been referred for an hourly rate under the contract. Also, Councilman Plecnik denied that he knew of the Unfair Labor Practice, but indeed I had communicated the information to all of Council, along with the complete contract from Zashin and Rich.

- If the Unfair Labor Practice item was something that Council considered “emergency” in nature, it would not have been handled by Mr. Byron.
- Section 4 of the Ordinance for Mr. Byron violates the Public Records Act. “Council will determine what will be released as Public Record.” Council does not have the authority to do this.
- Section 9 of the Ordinance indicates that Council “adopted the Ordinance in an Open Meeting” when the video tape clearly shows how the legislation was prepared and distributed, which was not in an open meeting format.

Since Mr. Brichacek was excused from the Executive Session, the financial consideration of how to pay for the contract being offered to Mr. Byron was never reviewed. I personally never recommended any salary amount for this, which is my responsibility under Charter Provision 2.27. In addition, I believe Council was reckless in approving this expenditure without the proper appropriation or budget consideration.

In closing, I hereby veto Ordinance 2017-70 as it violates the spirit and letters of our Charter, City Ordinances and separation of power on multiple instances.

cc: Finance Director Frank Brichacek  
Attorney Steve Byron of Walter Haverfield, LLC  
County Prosecutor Chuck Coulson  
Attorney Todd Hunt of Walter Haverfield, LLC  
Attorney Ralph Spitaleri of Walter Haverfield, LLC  
Ohio Ethics Commission  
State Auditor David Yost  
Attorney General Mike DeWine  
Cleveland.com  
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