

City of Willoughby Hills

Interoffice Memo

Date: August 23, 2018

To: Council President Fellows, Council Members and Council Clerk

From: Robert M. Weger, Mayor/Safety Director

Subject: Veto on Ordinance 2018-41 Charter Reform

On Monday, August 13, 2018, Council held a Rules Meeting, at which time proposed Ordinance 2018-41 was distributed. That was the first time I had seen the Ordinance. During this meeting, Councilman Plecnik was afforded time to recap the Ordinance, using generalities for each of the proposed ballot amendments. There was little to no discussion of each of the items, but rather insistence on the part of Council to “get it to the ballot to let the voters decide.”

On Thursday, August 16, 2018, Council held a Special Council meeting and passed Ordinance 2018-41. I did not attend this meeting due to a previous family commitment, but was very surprised to learn that the Ordinance was passed (by 5 members of Council) without Three Readings or Public Hearings. I have some very serious concerns about the passage of this ordinance, to include the legality, morality and sensibility of its contents. Can it be legal to deprive our residents of the power to remove their Mayor, as you propose in Amendment #4? Further, to remove the Charter provision for due process is morally wrong, as you propose in Amendment #4. In addition, to hire competent Department Heads and then have them be fearful of losing their position on the “whim” of Council (as you propose in Amendment #9), is not sensible for maintaining continuity and efficiency for our city.

I need to point out to Council at this time, therefore, that my subsequent careful, lengthy review of this Ordinance clearly identifies Council’s attempt to add a provision to remove me as Mayor with their proposal in 9.32. Despite the current powers of 9.32 that have been in the Charter since its inception which grant Council authority to “punish, suspend or remove from office any member of Council or any employee or officer to whom Council may appoint a successor”, this Council now has decided to add “the Mayor” to those individuals they have the power to remove. In addition, they have deleted the “due process” provision outlined currently in Section 9.34.

It is now, knowing Council’s intention to add this provision with the obvious intent to remove me as the Mayor of the City of Willoughby Hills that I must remind you of the provisions in our current Charter that I can and should exercise immediately. That is, Section 9.32 of our Charter states “Removal by Mayor. The Mayor shall remove **promptly** any such **officer**” (which Council meets the criteria for as outlined in Section 9.1 of our Charter) “or employee for

violation of any of the requirements stated in Section 9.2 , for gross misconduct, malfeasance or non-feasance in office...” I clearly understand your proposed amendment does not provide for this authority, which means I would plan to exercise my authority prior to the possibility of any change by Council.

In other words, I, as Mayor, have the authority **NOW** to remove **PROMPTLY** any member of Council for gross misconduct, malfeasance, or non-feasance in office. I could certainly substantiate this at this time given the following reckless, malicious actions:

- Council’s illegal passage of four ordinances for legal counsel, as ruled in a court of law (page 13 of the Common Pleas Court Decision 17-CV-001758)
- Council’s illegal passage of an ordinance to deprive me of my power as Mayor to handle all Union matters and appoint Council President Nancy Fellows as Acting Mayor, as ruled in a Court of Law
- Council members’ repeated attempts to publicly degrade me, with insistence that I resign
- Council’s passage of legislation depriving me of my right to communicate with our residents without their censorship
- Council’s “setting aside” of several Ordinance vetoes without regard for the impact on the health, safety and welfare of our residents
- Council’s use of City funds for legal fees, including nearly exhausting insurance benefits on a legal defense, and then passing legislation to spend even more on an appeal
- Council blatantly ignored my authority for Stephen Byron’s removal as “Acting Law Director” by allowing him to continue to sit at the Council table and weigh in on municipal issues.

In a nutshell, I certainly have the right and reason to proceed at this time with the prompt removal of several Council members. In my opinion, if Council decides to exercise their right to present these Charter amendments for ballot consideration, I may have no option but to exercise my current right to plan for this removal. Incidentally, there is no due process provided to Council members either. This may not seem to be a problem to you, however, since your proposal includes elimination of due process anyway.

In the event you want me to provide even further evidence as to why you should not proceed with these Charter amendments, I offer the following additional concerns on specific items that cause me to veto Ordinance 2018-41:

- There were no Public Hearings on these proposed Charter Amendments to give our residents an opportunity to weigh in. This is almost unconscionable, given the scrutiny we put our Charter Review Commissions through to make sure our residents are given ample opportunity to be informed and understand the anticipated changes. By the time the amendments reach the ballot, it is too late for the residents to weigh in. They can offer constructive criticism before the ballot language is written if they were given the

opportunity to do so by way of Public Hearings. It is very selfish for Council to proceed without the knowledge or input of their constituents.

- There was no legal counsel, trained in municipal law, to review these proposed amendments. This is a huge concern as the City certainly cannot afford to proceed without a legal eye put to these proposals.
- Discussions at the Council table were halted when “the question was called” by Council Vice President Plecnik. Unfortunately, this action did not provide the public to learn more about the amendments, or to offer suggestions that might make them “better written” or morally accepted.
- There were obviously Sunshine Law violations when Council President Fellows admitted that “all Council members except Councilman Hallum” participated in the preparation of the amendments for Charter reform. When were they prepared? Who prepared them? Was there outside legal assistance from anyone? The illegal preparation of this Ordinance should not be condoned. We are well aware (following Judge Fuhrey’s recent decision in Lake County Common Pleas Court #17 CV 007158) of the consequences of the preparation of illegal legislation.
- **Proposed Charter Amendment #1 - Council’s Removal of Mayor’s Sole Authority for Appointment of Department Directors violates Ohio Revised Code 733.03 and 731.05**

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.”

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...”

In addition, Council must admit that their confirmation that is currently required on Department Heads has been disastrous over the past year. This includes Council’s refusal to confirm Assistant Fire Chief Thomas Talcott as Fire Chief, LT Patricia Heller as Acting Fire Chief, a qualified candidate for the Building Commissioner (leaving us without a Building Commissioner and outsourcing everything to Lake County Building Department), Gretchen Weitbrecht as Recreation Coordinator, Attorney Michael Germano as Law Director, James O’Leary as Law Director and now, over six weeks without the confirmation of Joseph Diemert as Law Director. The indecisiveness of

Council without adequate explanation or substantiated reason for denial of confirmation is very concerning and morally and ethically wrong.

Proposed Charter Amendment #1 deprives the Mayor of the privilege to hire and fire the Police Chief, Fire Chief, Department Heads, Acting Department Heads and employees hired by Council. Council has legislative, not administrative, authority.

Proposed Charter Amendment #1 deprives the Mayor the privilege to serve as Director of Public Safety/Public Service without Council confirmation. The Mayor is the Chief Executive Officer and should be able to serve in that capacity without Council confirmation. One needs to think about the situation in our City, such as a school shooting, or something similar to last September's unfortunate Police shooting at the Classic dealership. The scenario of not knowing who would be in charge of an incident such as these because you have not afforded the Mayor the opportunity to serve in this capacity could be very troublesome for our city and its residents, as well as provide for an unsafe situation.

Proposed Charter Amendment #1 deprives the Mayor the privilege to supervise all Department Heads. In the current 2.21 Section of our Charter, the Mayor has the authority to hire, fire and supervise Department Heads. Council has now eliminated this function, placing a serious burden on the overall operation of the City and serves to set the City up for potential issues and liabilities without this supervisory control.

- **Proposed Charter Amendment #2 – Appointment and Confirmation Process Changed to Deny Mayor's Authority**

This amendment violated ORC 731.05 Powers of Legislative Authority in that it gives Council administrative authority to confirm Board and Commission appointments. Our Administration provides for a process with Board and Commission members as it relates to their voluntary, unpaid service to our city. To bring politics into the appointment is morally and ethically wrong. If a Council member does not agree with a member, that member would be targeted while he is serving our community. The Board & Commission Chairman is responsible for his members and, should there be a concern with a member's actions, the Mayor, not Council, should be responsible for dealing with this administrative function.

Given Council's history of failure to confirm the Mayor's appointment recently, proposed Charter Amendment #2 could potentially cause a city "shut down." If Council, for example, would not approve members of the PC-ABR, there would be a stalemate in economic development and residential building in our city. Hiring would be detained without Civil Service Commission's credentialing process. Recreation activities would come to a halt without member confirmation. Having Council, a legislative only body, now assume administrative duties in confirming Board and Commission members is wrong, and potentially dangerous for the health, safety and welfare of the City of Willoughby Hills.

- **Proposed Charter Amendment #3 – Standards for Conduct and Hiring Prohibition Changed Despite Charter Review Commission’s Recommendations**

Proposed Charter Amendment #3 recreates a problem that was fixed with the last Charter Review Commission’s work. The voters have already told Council that they want to follow Ohio Law which provides for an excellent understanding of conflict of interest. Council should review the Public Hearings, notes and discussions from the last Charter Review Commission to fully understand their reasoning and the potential issues that the amendment revision poses.

Proposed Charter Amendment #3 allows for an officer or employee to hold other elective public office or employment incomparable with his municipal duties. Why was the provision to prevent this eliminated from our current Charter? Could it have been removed to allow Council Vice President Plecnik to serve with these provisions? These provisions were put into our Charter by past Charter Review Commission (CRC) personnel and removing them creates a potential for legal concerns in the future. Council’s inclusion of Article IV revisions in their “Charter Reform” is very shortsighted and not taking the time to meet with previous CRC members on this issue is reckless.

- **Proposed Charter Amendment #4 - Council’s Ability to Remove the Mayor and Eliminates the Current Due Process Provision**

Proposed Charter Amendment #4 allows for Council’s removal of the Mayor in Section 9.32. This is unfair to the electors and is probably not even legal. Further, it removes the “due process” (previously in 9.34 of our Charter), that was so necessarily put into place by our last CRC. Without the ability to go through due process, how can one be removed for “serious misconduct?” Who is the judge? What constitutes “serious misconduct?” Is the process documented to create a uniformity among all members to prevent an EEOC legal concern? Again, this is reckless.

- **Proposed Charter Amendment #5 – Providing an Extension for Council to Do Their Job in Approving the Annual Budget**

Proposed Charter Amendment #5 is unnecessary. Council can certainly pass the budget in three readings. The Finance Director has been instructed to complete the budget by February 15th, which allows proper time for Council’s review and passage. In addition, Special Council meetings may be called if Council needs more time before the budget due date.

- **Proposed Charter Amendment #6 - Council’s Administrative Authority to Approve “Acting Directors”**

Proposed Charter Amendment #6 gives Council administrative authority once again, which violates ORC 731.05. The “Acting” directors should be a position that is short-lived and Council should be vigilant to confirm the Mayor’s appointments, particularly after the Civil Service Commission’s complete and thorough process that is now in place.

- **Proposed Charter Amendment #7 - Council's Change in the Number of Signature Provided on a Petition (Now that a Petition is currently in process!)**

Proposed Charter Amendment #7 seems to have been put in the forefront with the recent recall petition efforts currently in our City. This is a retaliatory and unfair provision that is unreasonable, and probably unlawful, given the fact that a petition for recall of Council members is currently in process and has already been reported to the City Clerk, as required by law. The 25% should not be on total electors, many of whom are transient or "passive" electors. In addition, the number needs to be something that is attainable, yet still require an effort on the part of the circulator. The way it currently reads measures up to those prerequisites, but Council's proposal certainly does not.

- **Proposed Charter Amendment #8 - Council's Change in Special Election Fee Liability**

Proposed Charter Amendment #8 also appears to be retaliatory in nature, based upon the recall petition currently in process. If there is just cause with the adequate number of electors' signatures, the City should proceed with the cost of a Special Election to ensure the health, safety and welfare of our residents. The circulators should not be responsible to cover the expense of an effort intended to improve our City government.

- **Proposed Charter Amendment #9 - Council's Attempt to Control the Longevity of Department Directors**

Proposed Charter Amendment #9 limits the longevity of our Department Directors. Councilman Plecnik announced at the Rules meeting that Highland Heights has this provision, whereby they limit the terms of Department Directors to two years. Council's proposal in amendment #9 suggests four years. Verification of Councilman Plecnik's statements find them to be false and misleading in order to "pass" this Charter Amendment proposal through Council members and our residents. The truth is that only Highland Heights' Law Director and Prosecutor have two-year appointments, renewable by Mayor and Council. Highland Heights' Finance Director has a four-year appointment, which has not been enforced. No other directors have term limits on their appointments. Analysis of other local City Charters could not produce any such term limits, as Councilman Plecnik probably knows.

When a Department Director is hired in Willoughby Hills, I have confidence that it will be for the long-term benefit of our city. I believe longevity proves to provide a knowledge, history and understanding of how the department runs. If a Department Head is not performing, I will not keep him in a position that will jeopardize the City services or budget. If a person comes to a job and thinks that he may be gone in four years (or even sooner based upon Council's criteria), Willoughby Hills stands to lose the opportunity to get the best candidate. Also, Council's "vetting" (as noted in the Charter Amendment proposal), is very vague. What does it consist of? Who administers it? Having this written in this format certainly presents some legal concerns as there is no process designed to treat all employees fairly and could potentially present some EEOC

concerns. This appears to be political in nature and can be retaliatory. It would, in effect, compromise the health, safety and welfare of our residents.

In closing, I hereby veto Ordinance 2018-41 as it violates the spirit and letters of our Charter, City Ordinances and separation of power on multiple instances. Further, Council did not have the legislative authority to already present these ballot issues to the Lake County Board of Elections as the Ordinance had not been signed, vetoed, or set aside at the time the Council Clerk or a member of Council released these Charter amendments for the ballot to the News-Herald or the Board of Elections.

cc: Finance Director Frank Brichacek