

# City of Willoughby Hills

## Interoffice Memo

**Date:** May 21, 2018

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

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

**Subject:** Veto on Ordinance 2018-27 – Removal of the Mayor as the Sole Negotiating Agent Acting on the Part of the City in Any Matter in Connection with the WH AFSCME Union Pursuant to 4117.20

I hereby veto Ordinance 2018-27, which was adopted at Council's Special Council meeting on May 17, 2018, due to the following reasons:

- This ordinance mimics Ordinance 2017-88 and 2018-6, which were challenged and lost by Council in the recent case *Weger vs. Willoughby Hills City Council* (Case 17-CV001758). These ordinances were judicially determined to be "illegal, unlawful, and null and void *ab initio*."
- This ordinance mimics Ordinance 2017-21, (which I vetoed on April 9, 2018) and which had specifically named "Joseph Gross and the law firm of Benesch, Friedlander, Coplan & Aronoff" as the law firm to represent City Council as special counsel in Union matters. The current legislation, however, simply indicates that the Mayor will be removed to act in the capacity to represent the City, but does not yet specifically assign a law firm.
- Without a current Law Director, I have some concerns about the drafting of this ordinance. During the 5/17/18 Special Council meeting, Council President Fellows stated that "all Council members" were involved of the drafting of the Ordinance, but Councilman Hallum was not. Further, if "all Council members" (other than Councilman Hallum) drafted the Ordinances, does this create a Sunshine Law violation concern?
- Judge Fuhry's direction on Page 14 of the Judgment was "By statute, only the Mayor may negotiate and represent the city in the labor negotiations that are the subjects of the ordinances" In addition, page 17, Item 6, states "It is further found and declared

that the Mayor of Willoughby Hills has the sole and exclusive duty to negotiate labor agreements as set forth in Chapter 4117 of the Revised Code.”

Council’s opinion now, however, “Mayor Robert M. Weger has repeatedly demonstrated that he has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer” is not substantiated. Without substantiated, truthful proof of any “conflict of interest,” Judge Fuhry’s determination of the Mayor’s authority cannot be challenged.

- Council’s exhibits to Ordinance 2018-27 do not provide adequate documentation to substantiate their claims of “conflict of interest”:
  - 1) Exhibit “A” is my veto on Ordinance 2018-13, Sections 2,3,4,5,and 9. I had vetoed this ordinance, which provided appropriations for the City budget which eliminated personnel. My reasons are clearly outlined in the veto, but include:
    - Lack of experience of Councilwoman Pizmoht to evaluate a balanced budget, with no regard for my experience, in which I brought the City’s unauditable financial records to those with a surplus balance and State Auditor accolades over many years
    - General Fund monies proposed to pay “sewer fund” expenditures
    - Mayor’s Court – the work, personnel & sustainability were inaccurately assessed (This has now become clearly evident over the past three weeks without our Court personnel)
    - Mayor’s Office – the unfair assessment and expectations, once again being clearly evident over the past three weeks without administrative assistance in the Mayor’s office
    - “Union Busting” – outlining my proof and fair, unbiased assessment of Council’s actions and how they would affect probable Union actions, which have now come to fruition with the Unfair Labor Practice filed by the AFSCME Union. This particular item on the veto certainly does not substantiate Council’s claim of my “conflict of interest”, but rather looks out for the residents of our City. Council’s constant objection to the Union has, unfortunately, deprived them of reviewing the evidence objectively and, therefore, failing to see the potential for issues based on Ordinance 2018-13 and 2018-19 which clearly points to

discrimination of Union members and female, Administrative employees. In addition, it deprives our City of adequate positions to perform the Administrative functions of City Hall effectively, lawfully and successfully.

- Council's actions to allocate funding for Willoughby Hills Fire Department that had previously been ignored.
- Council's actions to allocate funding for Willoughby Hills Roads Program that were unchanged from my proposals to Council in October and November 2017.

2) Exhibit B is my April 9, 2018, letter to Attorney Joseph Gross of Benesch, Friedlander, Coplan and Aronoff to advise him of Ordinance 2018-21 (As Amended) that mirrored Ordinance 2017-88 and 2018-6, which the Court Judgment found to be illegal, unlawful, and null and void *ab initio*.

- This exhibit does not substantiate "conflict of interest." It clearly identifies to Mr. Gross the outcome of the lawsuit and my intention to terminate any actions by him or his firm that may result in another lawsuit. It does not show that I have a bias toward the Union, but rather a concern that Council once again overstepped their bounds of offering a contract that was illegal and unlawful.

3) Exhibit C is a copy of my "Mayor's Report" dated April 26, 2018. It does not substantiate a "conflict of interest", but instead:

- Provides Council and our residents with an understanding of Ordinances 2018-13 and 2018-19, which substantially changed the makeup of their City government. I had predicted issues with:
  - Mayor's Court – Willoughby Hills' cases have now gone to Willoughby Municipal Court and I anticipate a loss of income of approximately \$500,000 per year.
  - Mayor's Court – the past three weeks have resulted in waiver problems. The City has not been

represented well during this time, which is what I predicted in my report.

- Community Center – I had originally proposed to close the Center in my report; however, push back from renters and the lawsuit potential from existing contracts forced me to reverse my decision. It was always my intention to “follow the law” and abide by Ohio Elections Board rules to keep the Center open.
- Board and Commissions Clerk – I clearly advised Council and our residents that the Boards and Commissions would be without a Clerk, with Council’s lay off, affecting the part-time position. This worker, by contract, is unable to return to work and the ULP will prohibit her from doing so until it is settled. By contract, I am not permitted to hire for this position in her absence. This has now resulted in the BZA cancelling further meetings until the Clerk returns. PC-ABR has now announced that it, too, will cancel further meetings. This impedes our City’s Economic Development. Once again, this prediction in my report was not a “conflict of interest” or bias toward the Union. It was a reality that I had hoped Council would consider before moving forward with the layoffs.
- In my report, I report to Council and our residents about my meeting with the Union representative that had transpired earlier that week. It introduces the phrase “Union busting” which was the allegation of the Union on the grievance, and eventually on the ULP. The representative outlined to me the reasons why the Union made the allegations, which included 1) The City’s current financial records, 2) targeting a class of

Administrative employees, 3) targeting only Union employees and 4) targeting female employees. Further, I shared the discussions that I had with the representative, which reviewed the Union contract, to give Council an understanding of what was going to transpire during the layoff transition that Council mandated in Ordinance 2018-19. All of the items listed herein were solely provided to Council (and our residents) as a form of communication and should not be erroneously be construed as “conflict of interest.” I listened, I reviewed the information that was presented and proceeded to follow Council’s instruction to “notify the affected union in a lawful manner and follow up with the affected union as required by law and within the budgetary constraints of the City of Willoughby Hills.” I also “implemented the layoffs using the procedures set forth in the applicable collective bargaining agreement or with such other procedures” as I may work out with the union within the budgetary constraints of the City of Willoughby Hills. All layoffs herein shall be full executed no later than April 30, 2018.”

4) Exhibit D is an Email automatic reply from Executive Assistant Gloria Majeski. This does not substantiate “conflict of interest” whatsoever.

- Executive Assistant Gloria Majeski did this of her own free will and I had not directed her, or any employee, to handle email, phone messages or any other forms of communication prior to the layoff.
- Council did not provide adequate time for the layoff provision, to give me or our Finance Department adequate time to provide instruction to employees, vendors, residents or others. A layoff of this magnitude is certainly unprecedented in the City of Willoughby Hills, so when Council mandated April 30, 2018, as the “layoff deadline” in Ordinance 2018-19, I can truly report to

Council that this was unreasonable, problematic, and certainly would not be tolerated in the future. This should not be construed in any way as a bias toward our laid off employees or a “conflict of interest”, but rather a realization that the employees, Mayor’s Court work, Community Center contracts, that were all left behind were not treated properly and could have resulted in legal concerns.

- The second “Whereas” and the fifth “Whereas” clauses indicate that the SERB notification was not acted upon and, therefore, indicates that I have “not taken action to defend the interests of the City of Willoughby Hills as employer against the April 19, 2018, ULP (SERB Case No. 2018-ULP\_04-0066 for he did not respond to the charge.” For the record, it is my intention to advise SERB that Council felt they had good intentions to make significant staffing reductions to prepare a balanced budget, but certainly cannot dispute the fact that: 1) The City had the funds to pay these workers (our budget showed a \$1.2m carryover), 2) all personnel laid off were Union employees, 3) all personnel laid off were from Administration (none from Police, Fire or Service Departments), and 4) the majority were women, with no other departments such as Police, Fire and Service who are made up predominantly of male employees, were affected by the layoffs. These four items are facts, truthful in every sense of the word, and cannot be disputed.
- The sixth “Whereas” speaks of a “person...who has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer.” I do not agree with Council’s presumption that I “have an interest in the outcome of the bargaining” which would show bias toward the affected employees. Rather, I have clearly shown every attempt to cooperate with the Union to obtain the information needed to proceed to address their concerns and prepare a plan to represent the City as “Management” to diminish the legal concerns that may arise from Council’s actions, without the direction of a Law Director (I had asked Council’s confirmation of Attorney James O’Leary as our Law Director on April 26, 2018, without any communication or results from Council to date, despite Council approving the illegal and unlawful Law Director Stephen Byron in the matter of an hour on September 28, 2017).
- The eighth “Whereas”, as well as Section 2 of Ordinance 2018-27 once again (even after Judge Fuhry’s clear instruction, as noted on page 14 of the Journal Entry in Case No. 17-CV001758), unlawfully and illegally appoints Council President Fellows as “Acting Mayor.” This is unlawful and illegal for the following reasons:

- I am present and willing to perform my duties.
- There is no evidence that I was involved in any “collusion” at the time of the Court judgment and there is no evidence now that I am involved in any “conflict of interest” with the Union.
- Council’s determination that the Mayor “is unable to perform his duties” for such purposes pursuant to Section 2.4 of the Charter is in error and contrary to law. Invoking that section and using it to strip me of my statutory and Charter powers to make the Council President Acting Mayor is not warranted.
- Judge Fuhry further defined on page 14 of the Journal Entry in Case No. 17-CV001758 that “Council making the argument that “unable to perform his duties for any cause” is a phrase which Council is not empowered to define. It is not.”
- Judge Fuhry also determined, “While Council may have some discretion in determining when a mayor is “unable to perform his duties for any cause...” its judgment is not unfettered. A mayor cannot be ousted from performing the duties the position entails at the whim of Council.” Without proof of “conflict of interest,” Council once again appears to be enacting Ordinance 2018-27 “at their whim.”
- “Unable to perform Mayoral duties” are further defined, with Judge Fuhry pointing out “suspicion” and “legal disability” on pages 14 and 15 of the Judgment, which once again, do not meet the criteria of Council’s current “conflict of interest” accusation.
- Council should review Judge Fuhry’s case law cited on page 8 of the Judgment Entry, which reviews the 1982 case of Mayor Stephen Toth of Oregon, Ohio, and the City Council. Quite conversely to our current situation in Willoughby Hills, Mayor Toth proposed budget cuts which included layoffs of city personnel. Council did not agree with the proposed cuts. They passed legislation which defunded salaries. The Mayor vetoed the ordinances, citing the violation of separation of powers of the executive and legislative branches of government. He claimed they were an attempt to circumvent the mayor’s power and unlawfully interfered with the executive branch of city government. Council argued it was their right to legislate over budgetary matters. The Sixth District Court of Appeals agreed with the Mayor and declared the ordinances invalid. This example is a good example of a Mayor’s attempt to do the “right thing for his residents,” and not perceived as a “conflict of interest”

between his employees and Council, based upon the amount of money the City had to allocate to salaries.

In closing, I do not have a “conflict of interest” and continue to be fair to our residents. The past three weeks have proved the amount of work that needs to be done on a daily basis to fulfill all of the City’s contracts and resident concerns. This Ordinance represents Council’s perception that a “conflict of interest” exists and the four exhibits on this ordinance are insufficient in proving any type of conflict.