

October 22, 2020

By U.S. Priority Mail and email to diane.calta@beachwoodohio.com

Diane Calta
City of Beachwood
25325 Fairmount Boulevard
Cleveland, OH 44122

Re: Taxpayer demand under R.C. 733.56 and 733.59 to enjoin “special prosecutor”
Stephanie Scalise’s unauthorized representation of the City of Beachwood

Dear Ms. Calta,

This letter constitutes a demand by my client, Beachwood Councilman Mike Burkons, pursuant to Ohio Revised Code Sections 733.56 and 733.59, that you, as Beachwood’s law director, immediately seek an injunction against or otherwise terminate “special prosecutor” Stephanie Scalise’s unauthorized representation of the City in the criminal prosecution she has instituted against Burkons currently pending in the Chardon Municipal Court (Case No. 2020-CR-B-0858). If you do not immediately fulfill your obligation under R.C. 733.56 to enjoin Ms. Scalise’s unauthorized representation of the City, Mr. Burkons will exercise his right under R.C. 733.59 to institute legal proceedings on behalf of the City to ensure the same.

The basis for this demand, as you know from our recent correspondence, is that the Beachwood Charter and Codified Ordinances make clear that an attorney, including “special legal counsel,” may only act on the City’s behalf if specifically authorized “by ordinance of Council.” *See* Charter, Art. V Sec. 2.1, 2.3; B.C.O. Sec. 133.02–03. As you have admitted, no such ordinance was ever adopted here. *See Exhibit 1*, Diane Calta emails to Peter Pattakos, Oct. 19–20, 2020.

You have nevertheless claimed that Scalise’s representation of the City “is not in conflict with the City’s Charter nor its Codified Ordinances,” purportedly because Scalise was “appointed by the [Shaker Heights Municipal] Court” to serve as a prosecutor for the City after Assistant Law Director Nathalie Supler filed a motion requesting the same. *Id.* You have also informed me that the City “does not have an engagement agreement with Scalise relating to this matter,” and that, for unexplained reasons, “Ms. Scalise agreed to take on this appointment at no cost.” *Id.*

There are several problems with the City’s stated position here that require your immediate reconsideration:

First, in the City’s motion for “appointment of special prosecutor” that was filed with the Shaker Heights Municipal Court on September 14, 2020, the City admits it had already “engaged [Scalise] to gather and review all of the [purported] evidence” and “review the matter for criminal charges,” and also that Scalise had already completed this review and “communicat[ed] the findings of her investigation” to the Beachwood Prosecutor. *See Exhibit 2*, Beachwood motion for special prosecutor. Even if the Shaker Heights Municipal Court had authority to circumvent the Beachwood Charter and appoint a “special attorney” for Beachwood without Council’s approval of that attorney (as explained below, it does not, and it is also notable that the Shaker Heights Court had no reason to know that the City did not follow the necessary procedures in having “engaged” Scalise as special counsel), you have

not even tried to explain how the Law Director was authorized to have “engaged Scalise” to conduct the so-called “investigation” described in the City’s motion. *See* **Ex. 1**.

Thus, a review of the relevant Charter provisions is apparently in order:

- Article V, Section 2.1 of the Charter provides that the Law Director “shall be *appointed and supervised by Council*,” while “*Council may also provide* for Assistant Law Directors and special legal counsel.” (Emphasis added).
- Article V, Section 2.3 further provides that the Law Director “shall represent the City in all proceedings in court or before any administrative body,” and that “the Law Director shall perform [these] and all other duties ... *unless otherwise provided by Ordinance by Council*.” (Emphasis added).
- Accordingly, Beachwood Codified Ordinance 133.02 provides that the Law Director serves “subject to the direction of the Mayor and Council,” and “shall represent [Beachwood] in all proceedings in court,” and “shall perform all other duties ... *unless otherwise provided by ordinance of Council*.” (Emphasis added).
- And Codified Ordinance 133.03, which specifically pertains to the “hiring of assistants or special counsel,” confirms that “when it becomes necessary or advisable, *in the opinion of Council*, to employ assistants and/or special counsel to assist the Law Director in the performance of h[er] duties, *Council may employ such assistants and/or special counsel*, including any law firm with which the Law Director may be connected or a member, and agree to pay such assistants and/or special counsel such reasonable compensation *as shall be approved by Council*.” (Emphasis added).

These Charter and Code provisions confirm what should be obvious, especially under circumstances where the Law Director and her chief Assistant Law Director, the City Prosecutor, have admitted conflicts of interest barring their representation of the City: That the unelected Law Director, who is appointed by Council, does not have unfettered discretion to decide which attorneys represent the City of Beachwood and for what purposes. Rather, the Law Director serves “subject to the direction of the Mayor and Council,” and under the “supervis[ion] of Council,” and may only appoint Assistants or “special legal counsel” as “Council may ... provide” “by ordinance.” Charter Art. V. Sec. 2.1, 2.3; B.C.O. 133.02, 133.03.

If the law were otherwise, Beachwood’s elected executive and legislative officers, who are directly accountable to the City’s taxpayers, would not be able to control the selection of which attorneys represent the City in court, or for what “special” purposes.

This would of course be an absurd and extremely problematic result, as is unfortunately well illustrated by this case: a case in which, (1) two Law Department attorneys, you and Ms. Supler, whose alleged “inexperience” and “lack of depth of knowledge” has been the subject of local news coverage,¹ in part

¹ *See* Jane Kaufman, “Law department’s inexperience cited in Beachwood officer’s case,” *Cleveland Jewish News*, Sept. 3, 2020, https://www.clevelandjewishnews.com/news/local_news/law-department-s-inexperience-cited-in-beachwood-officer-s-case/article_de0104a6-eddc-11ea-b832-eb25640c25e2.html

due to Burkons’ “outspoken” calls for “transparency” regarding the City’s controversial mishandling of a police shooting at the Beachwood mall,² among other issues, and who (2) admittedly have conflicts of interest that would bar them from instituting a prosecution against Burkons themselves (*See Ex. 2*), (3) secretly contacted an outside attorney, a personal friend and former colleague of Supler’s in the Cuyahoga County Prosecutor’s Office, who is also Supler’s close current colleague as one of five lead prosecutors in the Shaker Heights Municipal Court, and (4) “engaged” that attorney as a “special prosecutor” for the City (*Id.*), (5) without legitimate authority to do so, either from Council, a court of law, or otherwise (*See Ex. 1*), and (6) also without a formal engagement agreement or any promise of payment (*Id.*), to (7) engineer a criminal prosecution against Burkons for his having sent a single email to Cleveland Heights officials defending Beachwood against a Cleveland Heights assistant law director’s public criticism of the City’s handling of a police disciplinary matter,³ (8) based on a wildly unprecedented and unsupportable interpretation of an Ohio statute, R.C. 2921.45, criminalizing “interference with civil rights,” (9) in which this “special prosecutor” has admitted (a) that she never spoke with the so-called “victim” (the Cleveland Heights Assistant Law Director) before deciding to institute criminal proceedings against Burkons,⁴ (b) that there was never any police investigation conducted or report submitted with respect to this alleged “crime” (*See Kaufman article at fn 4, below; See also Exhibit 4, Stephanie Scalise email to Pattakos, Oct. 19, 2020*), and, (c) that she cannot identify a single case from any court in U.S. history holding that a “civil right” exists to be free from the type of criticism contained in Burkons’ allegedly “criminal” email to Cleveland Heights officials.

To this last point, regarding the unprecedented and Orwellian notion that the alleged “victim” here had a “civil right” to be immune from Burkons responding in kind to his criticism of Beachwood’s handling of a police-disciplinary matter, it should also be noted that bedrock principles of First Amendment jurisprudence are emphatically and soundly to the contrary. Of course, there couldn’t possibly be

² *See Jane Kaufman, “Shooting leads to calls for police reforms in Beachwood,” Cleveland Jewish News, Aug. 6, 2020, https://www.clevelandjewishnews.com/news/local_news/shooting-leads-to-calls-for-police-reforms-in-beachwood/article_70385814-d7db-11ea-9109-d7db82a591c0.html*

³ Burkons’ allegedly “criminal” email to the Cleveland Heights City Manager and City Council members—in which he (1) expressed his opinions about what he viewed as the Cleveland Heights Assistant Law Director’s improper demand that Beachwood Council intervene to reopen a disciplinary matter against a police officer, for no apparent good reason, two years after the proceedings had been investigated and closed, and (2) asked the Cleveland Heights officials how they would react to a citizen who was demanding the same of them—is attached as **Exhibit 3**, along with the related chain of emails in which the Cleveland Heights Assistant Law Director escalates his criticism of Beachwood’s handling of this matter.

⁴ *See Jane Kaufman, “Beachwood councilman Burkons pleads not guilty,” Cleveland Jewish News, Oct. 16, 2020, https://www.clevelandjewishnews.com/news/local_news/beachwood-councilman-burkons-pleads-not-guilty/article_b36fff64-0fdb-11eb-b068-27fd92f435bd.html* (“Scalise said she was given ‘exactly what is in the public domain,’ the city council censure decision and the attachments and exhibits that accompanied it. Scalise said she made her determination of probable cause to issue a charge based solely on that information. ... After determining probable cause, she said she contacted Nouredine and requested he sign documents ‘in order for me to submit a complaint and an affidavit to the court.’”).

probable cause for a finding that someone interfered with a civil right that doesn't exist in the first place, and the idea that criminally actionable "interference" could have taken place here is repugnant to the most fundamental notions about how democracy is supposed to work. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 269, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) ("It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions, and this opportunity is to be afforded for vigorous advocacy no less than abstract discussion."); *Stow v. Coville*, 96 Ohio App.3d 70, 73–76, 644 N.E.2d 673 (9th Dist. 1994) ("[P]ublic discussion of public issues is a civic duty; the very survival of our system of government depends on its free exercise."); *Varanese v. Gall*, 35 Ohio St.3d 78, 83, 518 N.E.2d 1177 (1988) ("The very notion of a court interfering with the free flow of debate on matters of profound public concern is repugnant to our democratic way of life. ... The First Amendment presupposes that the freedom to speak one's mind is not only an aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole."); *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 413 N.E.2d 1187 (1980) ("Unless persons ... desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors. And to this extent debate on public issues and the conduct of public officials will become less uninhibited, less robust, and less wide-open."); *Suarez Corp. Industries v. McGraw*, 202 F.3d 676, 687–688 (4th Cir. 2000) ("The nature of the alleged retaliatory acts has particular significance where the[y] are in the form of speech. Not only is there an interest in having public officials fulfill their duties, a public official's own First Amendment speech rights are implicated. Thus, where a public official's alleged retaliation is in the nature of speech, in the absence of a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will imminently follow, such speech does not adversely affect a citizen's First Amendment rights, even if defamatory."); *Penthouse Int'l Ltd. v. Meese*, 291 U.S. App. D.C. 183, 939 F.2d 1011, 1015–16 (D.C. Cir. 1991) ("[T]he Supreme Court has never found a government abridgment of First Amendment rights in the absence of some actual or threatened imposition of governmental power or sanction."); *Thoma v. Hickel*, 947 P.2d 816, 821 (Alaska 1997) ("We do not believe that imposing ... liability on a public official who responds in kind to protected speech critical of the official would be consistent with the First Amendment.")⁵

⁵ The most Scalise has offered to explain why the fundamental First Amendment jurisprudence cited above does not render her unprecedented prosecution of Burkons void as a matter of law is her statement that, "my big picture goal with this whole case is that I am hoping your client will understand that when you're in public office, you cannot contact people's employers to 'tattle' on something that person did that you didn't like." *See Exhibit 5*, Scalise email to Pattakos, Oct. 16, 2020, 1:13 PM. This "no tattling" rule espoused by Scalise is nothing short of profoundly unconstitutional and outrageous—particularly as to a dispute among public officials about a matter of public concern, and even more so with respect to an attempt to brand the alleged "tattler" as a criminal. But even if the alleged "victim" here were not a government attorney who escalated public criticism of Burkons' and his colleagues in the Beachwood government's handling of a police disciplinary matter, there is no doubt that U.S. citizens, whether public officials or not, are free under the law to contact whomever they please to complain about whomever or whatever they please, provided those complaints aren't accompanied by defamatory statements of fact, or serious threats, either to the subject's personal safety, or, in the case of a public official, that would credibly suggest that coercive or punitive government action is forthcoming. *E.g., Suarez Corp. Industries, supra*.

While there are naturally few Ohio cases addressing the specific type of unauthorized governmental conduct at issue in this case, the Supreme Court has made clear that, “where the proceedings of a municipal corporation are unauthorized and void, either from the want of power, or from its unlawful exercise ... a suit to enjoin them may ... be properly brought” under R.C. 733.56 and 733.59. *Elyria Gas & Water Co. v. Elyria*, 57 Ohio St. 374, 383–84, 49 N.E. 335 (1898). And the Court has also expressly confirmed the “right” of “council members” to “advise and consent” on attorney appointments that the council is authorized by a city’s charter to make, and that litigation on a city’s behalf instituted by attorneys that had “no authority under the charter” to act for the city is accordingly void as a matter of law. *Cuyaboga Falls v. Robart*, 58 Ohio St.3d 1, 6–7, 567 N.E.2d 987 (1991) (“We note that the mayor’s approval of Ordinance No. 71-1988 is irrelevant to the disposition of this issue. Regardless of the mayor’s approval of that ordinance, the city under these circumstances cannot hire outside counsel to perform duties reposed in the law director by the charter.”). See also *Citizens for Fair Taxation v. City of Toledo*, 90 Ohio App.3d 272, 278, 629 N.E.2d 20 (6th Dist. 1992) (“The oral agreement entered into between the City Law Director and the law firm of Calfee, Halter & Griswold ... was not made with prior approval of the city council, was not in writing and, therefore, was clearly entered into in violation of Section 228 of the city charter. As such, that agreement is void and, pursuant to Section 229 of the city charter, the city is under no obligation whatsoever to honor it.”); *Schisler v. Clausing*, 4th Dist. Scioto No. 1301, 1980 Ohio App. LEXIS 10091, at *7 (Sep. 17, 1980) (“[T]hat the council was exercising its authority to discharge the city manager contrary to the power conferred in the charter, if true, would constitute an ‘abuse of corporate power’ within the meaning of [R.C. 733.56].”); *City Of Cincinnati ex rel. Smitherman v. City of Cincinnati*, 188 Ohio App.3d 171, 2010-Ohio-2768, 934 N.E.2d 985, ¶ 10–25 (1st Dist.) (upholding summary judgment and an award of attorneys’ fees to a taxpayer who “sought a prohibitory injunction [under R.C. 733.56 and 733.59], to restrain and prevent the abuse of corporate powers by the city, acting through its city council, to subject future appointments to the CMHA board to the advice and consent of the city council”).

Finally, it bears emphasis that you and your colleagues seemed to clearly understand the above-discussed Charter and Code requirements for the appointment of special counsel just last August, when Council, in your presence and presumably at your direction, considered and approved Ordinance No. 2019-95. This Ordinance was enacted expressly “in accordance with B.C.O. 133.03, ‘Hiring of Assistants or Special Counsel,’” to “engage the firm of Baker & Hostetler LLP and appoint attorney Carole Rendon as Special Counsel for the City of Beachwood,” to “provide legal services related to an employment matter,” for “compensat[ion] by the City in an amount not to exceed Thirty Thousand Dollars (\$30,000.00).” See **Exhibit 6**, Minutes of August 22, 2019 Special Council Meeting.

It is puzzling, to say the least, that when the determination was made, however dubiously, that “special counsel” was needed to assess the legal implications of Burkons having sent the allegedly “criminal” email at issue (*See* Ex. 3; fn 3, above), the City proceeded to retain “special counsel” in such a wildly different and less transparent manner than it did in the Horwitz case. There is plenty of reason to believe that if the City would have simply followed the Charter and Code to allow Council to consider whether it was necessary to properly retain and pay a “special” attorney here, as it did in the Horwitz case, much if not all of the mess discussed above would have been avoided. This, again, surely goes a long way to explain why these provisions exist in the first place, and why it’s especially important that they be followed where the Law Director and City Prosecutor each have admitted conflicts that prohibit their involvement in the matter.

In any event, on consideration of the above, I hope you understand that you are legally obligated to ensure that Ms. Scalise's unauthorized representation of the City is immediately enjoined or otherwise ceases, and that it will be Burkons' right to file suit to ensure the same if you do not do so. *See Ryder v. City of Akron*, 9th Dist. Summit C.A. No. 12667, 1987 Ohio App. LEXIS 5506, at *1-*4 (Jan. 14, 1987) ("When the law director took no action, Ryder filed a taxpayer's action ... alleg[ing] that the barricades were placed and are maintained without legislative authority or action by the Akron City Planning Commission. His complaint thus alleges an abuse of corporate power [and] ... summary judgment is inappropriate.") (citing R.C. 733.56 and 733.59).

I also hope you agree that it is clearly in the best interests of all involved here, not least the citizens of Beachwood, that if Council does decide, upon due consideration, that "special counsel" need be retained regarding this Burkons matter, that this "special counsel" be someone other than Ms. Scalise so as to ensure that a properly appointed attorney provides an independent opinion as to this matter of increasingly profound public concern.

I look forward to your prompt response.

Thank you,

A handwritten signature in black ink, appearing to read 'P. Pattakos', with a long horizontal line extending to the right.

Peter Pattakos

cc: Hon. Terri Stupica
Hon. K.J. Montgomery
Nathalie Supler, Esq.
Stephanie Scalise, Esq.
Robert Botnick, Esq.
Rachel Hazelet, Esq.



Peter Pattakos <peter@pattakoslaw.com>

Beachwood councilperson Mike Burkons

Diane Calta <Diane.Calta@beachwoodohio.com>

Tue, Oct 20, 2020 at 5:09 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: Whitney Crook <Whitney.Crook@beachwoodohio.com>, Nathalie Supler <Nathalie.Supler@beachwoodohio.com>

Pete- My email to you clarifying and confirming your initial request and the time period is attached. Please confirm that you are requesting the same documents in that request, from June 6th on, from Council Members, the Mayor and the Law Department? If so, I have asked all individuals for any responsive documents and anticipate a response to you by the end of this week.

In response to your email from September 29, 2020- Please see documents attached in response to your request:

“3) all records relating to City Council's decision to publicly censure Mr. Burkons on 8/17, including all emails and text messages relating to Council's deliberations as to whether Burkons should be censured.”

Resolution No. 2020-3; Censure Emails PRR Pattakos; and Censure Text PRR Pattakos

The emails and text message are the same document were already provided to your client in response to a request he made.

I will follow up on your request:

“2) all records reflecting any criminal charges or proceedings or police reports against Alix Nouredine, including juvenile records;”

Documents responsive to the following were already provided to you:

“1) all records relating to former police chief Gary Haba's recent resignation or retirement, including the notice that he provided to the City regarding the same, and all records relating to his contemplation of retirement or resignation, and the City's need to replace him, including all documents relating to the search for his replacement and the candidates that were interviewed for the position;”

If you are requesting any additional documents, please let me know as soon as possible.

With regard to your question about the appointment of the special prosecutor- Per Charter Article v, Section 2(3)-“The Law Director, or an Assistant Law Director, as designated by the Law Director, shall act as the City's prosecuting attorney before the Mayor's Court, Municipal Court and upon appeals.” Ms. Supler is the City's Assistant Law Director and Prosecutor. Due to her conflict, she appealed to the Court to allow her to withdraw from any review of the matter and have Ms. Scalise appointed in her stead. Ms. Scalise agreed to take on this appointment at no cost to the City. This is not in conflict with the City's Charter nor its Codified Ordinances.

dac

EXHIBIT 1

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Tuesday, October 20, 2020 9:02 AM
To: Diane Calta <Diane.Calta@beachwoodohio.com>
Cc: Whitney Crook <Whitney.Crook@beachwoodohio.com>
Subject: Re: FW: Beachwood councilperson Mike Burkons

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Diane, I am writing to follow up again on the below so we can avoid any further confusion about the public records we have requested. I still have not received records in response to a number of my requests, including for ALL records relating to the decisions to censure Burkons and to retain a special prosecutor to assess criminal charges against him (both before and after June 6). This includes emails, text messages, and records of phone calls between any City officials, including Council members, and including yourself and Ms. Supler, who are admittedly conflicted, cannot provide legal advice to the City on this matter, and whose communications are accordingly not protected by the attorney-client privilege regarding these matters. Also, I still have not received Mr. Nouredine's criminal and juvenile records that I asked for, nor any word on why they haven't yet been produced.

Also, it is imperative that you immediately explain the authority by which Stephanie Scalise is purporting to represent the City, and who is paying for her work on this. When the City sought the Court order to appoint her, it represented to the Court that Scalise had already been "engaged." And even a Court order appointing Stephanie to represent the City cannot supervene the Charter, which clearly provides that a special prosecutor cannot be appointed to represent the City "unless otherwise provided by Ordinance by Council." Art. V, Sec. 2.3; See *also* Code Sec. 133.03.

Thank you,

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Mon, Oct 19, 2020 at 3:07 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Thanks, Diane. First, my September 25 letter requests "records reflecting all communications, by phone, email, or otherwise, between Mr. Nourredine and any Beachwood officials." This includes all communications both before and after June 6 and I have no idea how you would have formed a contrary impression from our phone conversations or

otherwise. Please produce these records ASAP.

Re: the City's engagement of Stephanie Scalise, I must admit I'm confused. First, why would Stephanie work for free on this case? And if she's not working for free, who is paying her if it's not the City of Beachwood? Also, what is the legal mechanism by which the City of Beachwood is permitted to avoid the Code provision, 133.03, requiring Council's approval before hiring special counsel to relieve the Law Director of her duty to "represent the City in all proceedings in court or before any administrative body" as stated in Article V, Section 2 of the Charter? How could Scalise be authorized to represent the City here if there wasn't a Council vote approving the same?

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Mon, Oct 19, 2020 at 2:17 PM Diane Calta <Diane.Calta@beachwoodohio.com> wrote:

Peter- I was of the understanding that you requested information prior to June 6th. I confirmed that in our phone conversation and in my email to you. I will ask Mr. Pasch for any phone calls and/or text messages between him and Mr. Nouredine from June 6th forward. Please confirm that my understanding of your request below dated October 16, 2020 is correct.

The City does not have an engagement agreement with Prosecutor Scalise relating to this matter. She was appointed by the Court and is not being paid by the City of Beachwood for her services. The Motion and the Court entry are included on the Court docket.

dac

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Friday, October 16, 2020 12:40 PM
To: Diane Calta <Diane.Calta@beachwoodohio.com>
Cc: Whitney Crook <Whitney.Crook@beachwoodohio.com>
Subject: Re: FW: Beachwood councilperson Mike Burkons

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Thanks. What about the phone calls and text messages between Nouredine and Pasch that happened after June 6? Why haven't documentation of those been produced?

Also, please produce the City's engagement agreement with Stephanie Scalise relating to this matter and all documents reflecting the terms of the engagement, including how much she is being paid, and how this payment was approved.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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On Thu, Oct 15, 2020 at 11:14 AM Diane Calta <Diane.Calta@beachwoodohio.com> wrote:

Yes, I asked Mr. Pasch to do so and he did not locate any personal cell phone calls or text messages with Mr. Nouredine prior to June 6th, 2020.

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Wednesday, October 7, 2020 11:50 AM
To: Diane Calta <Diane.Calta@beachwoodohio.com>
Cc: Whitney Crook <Whitney.Crook@beachwoodohio.com>
Subject: Re: FW: Beachwood councilperson Mike Burkons

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Thanks. Did you look at Mr. Pasch's personal cell phones to see if there were any text messages or recorded call history on the devices?

(Traffic/Criminal Case Division)

20CRB00722

Journal Entry Sheet

BEACHWOOD

-VS-

Offense(s) Charged:

2921.45 INTERFERING/CIVIL RTS

Attorney for Defendant:

MICHAEL BURKONS

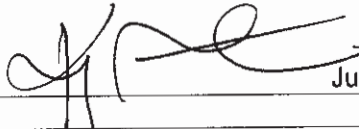
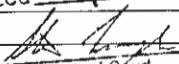

DATE	JOURNAL ENTRIES
09/28/2020	<p>Beachwood city prosecutors motion to withdraw from case is granted.</p> <p> Judge</p> <p>Journalized <u>9/28/2020</u></p> <p> Clerk of Court</p> <p>By  Deputy Clerk</p>

EXHIBIT 2

SHAKER HTS. MUNI CT
SEP 14 A 9 33

IN THE SHAKER HEIGHTS MUNICIPAL COURT
SHAKER HEIGHTS, OHIO

CITY OF BEACHWOOD, OHIO

PLAINTIFF,

-vs-

MICHAEL BURKONS,

DEFENDANT.

CASE NO.: 20 ARW 00001

JUDGE K.J. MONTGOMERY

MOTION OF PROSECUTING
ATTORNEY TO WITHDRAW
AS COUNSEL AND
APPOINTMENT OF SPECIAL
PROSECUTOR

The City of Beachwood, by and through its Prosecutor, Nathalie E. Supler, respectfully requests this Court allow the Prosecutor to withdraw from the above captioned matter. The basis for this request is that a conflict of interest exists. The Defendant, Michael Burkons, is a member of the Beachwood City Council. The Prosecutor is appointed to serve by the Beachwood City Council pursuant to the City Charter. Based on this professional relationship, this Motion is necessary to avoid any appearance of impropriety or a suggestion of conflicting interest.

When the complaint was made to the City of Beachwood, the City of Beachwood immediately engaged the University Heights Prosecutor, Stephanie Scalise, to gather and review all of the relevant evidence. The City of Beachwood engaged the University Heights Prosecutor to review the matter for criminal charges to ensure the review process was fair and unbiased. The University Heights Prosecutor contacted the Beachwood Prosecutor to communicate the findings of her investigation and this is the basis for the City of Beachwood's request to withdraw.

For these reasons, it is respectfully requested that this Honorable Court allow the

Prosecuting Attorney for the City of Beachwood to withdraw from the above matter.
Further, the City of Beachwood requests the Court appoint the University Heights
Prosecutor, Stephanie Scalise as Special Prosecutor for all matters concerning the
prosecution of the above matter.

Respectfully submitted,

NATHALIE E. SUPLER
ASSISTANT LAW DIRECTOR
CITY OF BEACHWOOD

By: Nathalie Supler
Nathalie E. Supler (#0088013)
BEACHWOOD PROSECUTOR
25325 Fairmount Blvd.
Beachwood, OH
Cleveland, Ohio 44113
Nathalie.Supler@beachwoodohio.com

**IN THE SHAKER HEIGHTS MUNICIPAL COURT
SHAKER HEIGHTS, OHIO**

CITY OF BEACHWOOD, OHIO

PLAINTIFF,

-vs-

MICHAEL BURKONS,

DEFENDANT.

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CASE NO.:

JUDGE K.J. MONTGOMERY

ORDER

For good cause shown, the Court hereby orders the Motion of the Prosecuting Attorney for the City of Beachwood to withdraw in the above matter is hereby granted. Further, the above matter is transferred to the docket of University Heights Prosecutor, Stephanie Scalise.

Judge K.J. Montgomery
Shaker Heights Municipal Court

Date

Fwd: Beachwood and George Floyd and real things the City can do!

Alix Nouredine <amn38@case.edu>

Mon 7/13/2020 9:56 AM

Deleted Items

To: James Pasch <James.Pasch@beachwoodohio.com>;

*****City of Beachwood Notice *****
This e-mail is from an external source. Think before you click links or open attachments.

There is something very wrong with Mike contacting my employer. Would you mind calling me to discuss this? [REDACTED]

Sent from my iPhone; please excuse brevity and errors

Begin forwarded message:

From: Mike Burkons <mike@burkonsforbeachwood.com>
Date: July 13, 2020 at 9:42:52 AM EDT
To: "clevelandheightscouncil@clvhts.com" <clevelandheightscouncil@clvhts.com>
Cc: "amn38@case.edu" <amn38@case.edu>
Subject: FW: Beachwood and George Floyd and real things the City can do!

Cleveland Hts. City Manager and Council,

I am a Beachwood City Councilmember and am very disappointed to receive the emails below from Alix Nouredine, a person listed as the Assistant Law Director in Cleveland Hts.

In his position, he must know that once a Councilmember is made aware that a complaint has been filed in regards to the behavior/conduct of an employee in the police department, and that it was addressed almost two years ago by the Chief, Mayor and law director to our satisfaction, that Councilmember should not decide to insert themselves into this issue that may result in employee discipline.

Let me ask you this. If there was an issue in Cleveland Hts., where 1) potential discipline of a police department employee was a possibility, 2) Council was made aware of it and felt that the complaint had been taken seriously and handled appropriately by the Chief, Law Director, HR person and Mayor, and 3) almost two years after the incident happened, the assistant law director from a different city emails Council expressing his dismay at the issue and its resolution and wants Councilmembers to insert ourselves in this issue that has already been resolved, would it be appropriate for a Councilman to insert themselves into this issue two years later?

I understand he wrote this as a resident and not as the assistant law director of Cleveland Hts. but in that position, he must know it would be completely inappropriate for a Councilmember to insert themselves into this situation which was already resolved simply because a resident demanded so. The entire email trail is below but it's troubling that he wrote the following...

*"Regardless, during a time when conversations need be had and responses are necessary, it is deeply unfortunate that you and your colleagues were instructed not to respond—and **actually listened**. Poor demonstration of leadership and accountability on behalf of Council and the Mayor. I expect more from my elected officials.*

As a member of the legislative body of the City, there is very much you and your colleagues could do, as you have already identified. So instead of worrying about competitive bidding or when you get your Council packets, maybe Council should refocus on matter of particular import. Oh, and actually respond to their constituents rather than hide."

From: Mike Burkons

Sent: Monday, July 13, 2020 8:26 AM

To: Alix Nouredine <amn38@case.edu>

Cc: James Pasch <James.Pasch@beachwoodohio.com>; Martin S. Horwitz <mayor@beachwoodohio.com>; Barbara Janovitz <Barbara.Janovitz@beachwoodohio.com>; Justin Berns <Justin.Berns@beachwoodohio.com>; Alec Isaacson <Alec.Isaacson@beachwoodohio.com>; Eric Synenberg <Eric.Synenberg@beachwoodohio.com>; June Taylor <June.Taylor@beachwoodohio.com>

Subject: Re: Beachwood and George Floyd and real things the City can do!

Alix,

I am glad you got what you were seeking. The likely reason no other Council member got involved was that this was an matter of potential discipline of a city employee, we are told not to involve ourselves in those matters and I didn't see how it would help when it was made clear to us that the law director was already getting you the documents you were seeking.

As the Assistant Law Director of the City of Cleveland Hts, I would think you would understand that?

Mike Burkons

Sent from my iPhone

On Jul 13, 2020, at 8:10 AM, Alix Nouredine <amn38@case.edu> wrote:

Yes, I did receive it — thank you. And thank you for being proactive and reaching out to me. The same cannot be said for the mayor or your colleagues on council.

Sent from my iPhone; please excuse brevity and errors

On Jul 12, 2020, at 10:25 PM, James Pasch <James.Pasch@beachwoodohio.com> wrote:

Hi Alix:

Just to clarify, I do want to make sure that you received the police report sent over from our law department to you in June. If you did not receive it, please let me know and I can resend.

Thank you,

James

James Pasch
Vice-President of Council
(216) 630-9671 - Office
- Fax
James.Pasch@beachwoodohio.com

[<image403987.PNG>](#)

[<image0ac62a.PNG>](#)

[<image8fe4b9.PNG>](#)

25325 Fairmount Blvd
Beachwood, OH 44122

[<image7b2a05.PNG>](#)

[<image3d215a.PNG>](#)

[<image96e59b.PNG>](#)

All records of the City, including this message and any response to it, are public records unless the records are specifically exempted from disclosure under the Ohio Public Records Act. Public Records are available to the public and media upon request. If you have received this communication erroneously, please immediately notify the sender of the communication.

From: James Pasch
Sent: Sunday, July 12, 2020 10:16:43 PM
To: Alix Nouredine; Mike Burkons
Cc: Martin S. Horwitz; Barbara Janovitz; Justin Berns; Alec Isaacson; Eric Synenberg; June Taylor
Subject: Re: Beachwood and George Floyd and real things the City can do!

Hi Mike - Since you asked (in your typical fashion) ... I spoke with Mr. Nouredine after I spoke with our former Chief and law department to figure out exactly what happened after he made his original call to our police department. I then also spoke with our law director who did some follow up on the matter so that we could provide Mr. Nouredine with any available details.

James

From: Alix Nouredine <amn38@case.edu>
Sent: Sunday, July 12, 2020 9:43:47 PM
To: Mike Burkons
Cc: Martin S. Horwitz; James Pasch; Barbara Janovitz; Justin Berns; Alec Isaacson; Eric Synenberg; June Taylor
Subject: Re: Beachwood and George Floyd and real things the City can do!

***City of Beachwood Notice *** This e-mail is from an external source. Think before you click links or open attachments.

Why were you instructed not to respond? If the officer acted appropriately, there'd be no reason not to respond.

Regardless, during a time when conversations need be had and responses are necessary, it is deeply unfortunate that you and your colleagues were instructed not to respond—and **actually listened**. Poor demonstration of leadership and accountability on behalf of Council and the Mayor. I expect more from my elected officials.

As a member of the legislative body of the City, there is very much you and your colleagues could do, as you have already identified. So instead of worrying about competitive bidding or when you get your Council packets, maybe Council should refocus on matter of particular import. Oh, and actually respond to their constituents rather than hide.

Sent from my iPhone; please excuse brevity and errors

On Jul 12, 2020, at 9:08 PM, Mike Burkons
<mike@burkonsforbeachwood.com> wrote:

We were instructed not to respond.

Please explain what James did besides respond? Please tell me and explain why his response isn't lip service. I didn't respond bc I know there is nothing I (or James) has the authority to do, or will do. I think it would be lip service to call and represent it differently.

However, if I can get 3 more people to vote for this, it can be an impactful policy.

Mike

Sent from my iPhone

On Jul 12, 2020, at 8:28 PM, Alix Nouredine
<amn38@case.edu> wrote:

You, and your colleagues on council with the exception of James, literally didn't respond to my email identifying a white beachwood officer harassing a black child. And now this? Mere lip service. Thanks, though.

Sent from my iPhone; please excuse brevity and errors

On Jul 12, 2020, at 8:10 PM, Mike Burkons
<mike@burkonsforbeachwood.com> wrote:

Beachwood and George Floyd and real things the City can do!

The reaction we are seeing in the wake of George Floyd's murder is almost identical to protests and civil unrest that came after other high-profile police killings captured on video like Tamir Rice, Freddie Gray, Walter Scott, Philando Castile. After each of these incidents there are protests and town hall meetings where everyone agrees that status quo thinking needs to be challenged along with some

uncomfortable conversations in order for real change to happen. Sadly, I haven't heard anything that challenges status quo thinking or makes anyone feel uncomfortable.

Let's be honest, unless you are in a room full of racists, there is nothing uncomfortable about publicly condemning and expressing outrage about George Floyd's murder, racism and unjust use of force. Doing so is about as brave as coming out publicly against Cancer. Despite what I believe are authentic intentions, these events usually end up being a discussion where the only takeaway is the promise of more discussions.

I wouldn't be writing this if I didn't have the following idea/suggestion I feel should be discussed and considered. Please hear me out...

I propose that the City of Beachwood pass an ordinance mandating that anytime a death or injury is caused by police use of force, the City will publicly post all the relevant audio and video of the incident in their possession, within 7 days unless a compelling reason is provided to explain the detriment from doing so. Here is why this is important...

It is not a coincidence that since Rodney King in 1991, almost every instance that triggered public outrage was a result of video footage captured by private individuals, instead from police body or dash cameras, despite their increased acceptance and prevalence. This is because when an incident happens and the police-controlled footage is requested, rarely is it released immediately and the status quo reason provided for the denial is almost always, "we don't release footage of a potential pending investigation". If it is released at all, it is usually months or even more than a year later when the outrage isn't as raw and most people have moved on.

Can anyone explain why no one has challenged this status quo response and asked why it matters if there is a pending investigation? In all these high profile instances where the footage was from a private citizen (Rodney King, Eric Gardner, Walter Scott, George Floyd) there were pending investigations and the immediate release of the footage didn't hamper them. Why would that be any different if the footage came from a police body or dash camera?

Last November there was a police shooting in East Cleveland and they released the footage to the media the same day despite a pending investigation. If you go to the City of San Diego Police Department Facebook page, they post the footage of all officer involved shootings usually within 2-3 days of their occurrence. The latest post is on June 10th with footage from a shooting the previous day. The non video part of the post reads, "We are committed to being open and transparent with the public. This is a critical incident video regarding an officer involved shooting that took place yesterday, July 9th, 2020. Viewer discretion is advised". We like to talk about our desire for Beachwood to be leader and ahead of the curve on these things. However, if we want to be a leader, we first have to catch up to East Cleveland and San Diego.

My hope and belief is in a City like Beachwood, it will be rare when these incidents happen. If and when they do, I hope and believe the footage will show the use of force was reasonable and justified. If it doesn't, we will deal with it. We won't run from it. We won't try to sweep it under the rug and hide it and at a minimum the public will know there will be accountability and transparency. Some may view this proposed policy as anti-police or that I am anti-police for suggesting it. Neither are true. I won't hesitate to publicly defend a police officer's use of force when I believe it to be justified. However, if it is not, I will also share that belief and call for accountability.

I am not naïve enough to believe that this proposal is a magic bullet that will solve all the complicated issues part of this discussion. That magic bullet doesn't exist but this policy will move the ball forward and give the public confidence that we take this issue and transparency extremely seriously.

There is a huge difference between espousing the importance of transparency and actually living those words and operating in a transparent way. As a City, Beachwood needs to make the choice to do the latter.

Sincerely,

Mike Burkons



Peter Pattakos <peter@pattakoslaw.com>

20CRB00722, Beachwood v. Michael Burkons

Stephanie Scalise <SScalise@universityheights.com>

Mon, Oct 19, 2020 at 1:53 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: Robert Botnick <robert@botnicklawfirm.com>

This message was sent from the City of University Heights.

I have confirmed that no police report was ever done related to this charge. No one asked the victim to do one, it was presumed that I would have him do so if I thought it necessary for the prosecution once the case was forwarded to me. Since I did not feel it was needed, I never asked him to do so either.

Stephanie B. Scalise,

Prosecutor & Assistant Law Director

City of University Heights

Law Department

[2300 Warrensville Center Road](#)

University Heights, Ohio 44118

P: (216) 906-0269

From: Peter Pattakos <peter@pattakoslaw.com>**Sent:** Friday, October 16, 2020 3:33:03 PM

[Quoted text hidden]

[Quoted text hidden]

EXHIBIT 4



Peter Pattakos <peter@pattakoslaw.com>

20CRB00722, Beachwood v. Michael Burkons

Stephanie Scalise <SScalise@universityheights.com>

Fri, Oct 16, 2020 at 1:12 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: Robert Botnick <robert@botnicklawfirm.com>

This message was sent from the City of University Heights.

If Mr. Nouredine made any other written documents or complaints, I was not given them. I want to be clear that I am not saying such a thing does not exist, because I don't know that. All I can confirm is that my file consists of the council's censure and it's attached exhibits, which were provided to me by the city prosecutor when I was asked to serve as a special prosecutor. No one from council or the police department have ever provided me with any documents, nor did I ask them to do so.

I have to say that I think we are not on the same page in how we view what this case is about - which is to be expected to some extent, of course. I think that I understand that you see this as being intertwined with the complaint Mr. Nouredine made about the police officer and, from what your client has publicly stated, I gather that your client seems them as being one issue as well. However, I don't think it's at all relevant what the substance of Mr. Nouredine's complaint entailed. He's a citizen of the city who made a complaint that Councilman Burkons did not agree with and the Councilman's response was to email that citizen's employer to "shut him up."

If I understand your previous emails, there are two defenses that I think you may be raising. The first is that your client was acting under the color of his office, but his email to the employer starts out by introducing himself as a councilman, so I wasn't convinced on that point. The second is that your client is merely engaging in a public dispute with another public servant, but that's also not convincing to me because the Councilman's own words indicated that he knows Mr. Nouredine's actions in his own city have nothing to do with his job in Cleveland Heights. In other words, I think that the actual language of the email itself already kind of diminishes or negates those two defenses.

If my summary of your points is mistaken, please let me know.

My big picture goal with this whole case is that I am hoping your client will understand that when you're in public office, you cannot contact people's employers to "tattle" on something that person did that you didn't like. It is worrisome to me that he's not really getting that. He recently sent an email to my employers (the mayor, the law director, and members of our city council, and who knows who else) to complain about my role as the special prosecutor - that was probably unwise. And, while I could personally care less, it does demonstrate to me that he still doesn't know that he did something wrong.

EXHIBIT 5

I'm open to hearing what you have to say. This email is not meant to dismiss you, but to simply explain where my thinking is about this matter right now. If you have other items you want me to consider, of course I will do so.

Stephanie B. Scalise,

Prosecutor & Assistant Law Director

City of University Heights

Law Department
[2300 Warrensville Center Road](#)
University Heights, Ohio 44118
P: (216) 906-0269

From: Peter Pattakos <peter@pattakoslaw.com>

Sent: Friday, October 16, 2020 10:02:43 AM

[Quoted text hidden]

[Quoted text hidden]

ADJOURNMENT

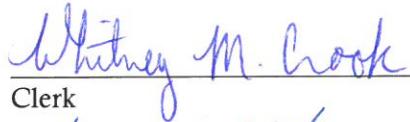
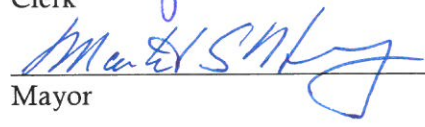
Moved by A. Isaacson, seconded by J. Berns, to adjourn the Special Council Meeting at 6:05 P.M. to the next regularly scheduled Council Meeting.

ROLL CALL

Yes: J. Berns, A. Isaacson, B. B. Janovitz,
B. Linick, J. Pasch, E. Synenberg, J. Taylor
No: None.
Abstain: None.
Not Voting: None.

MOTION ADOPTED

Approved:


Clerk

Mayor

Pursuant to Ordinance Number 2017-107 Council has determined that the official Minutes of its Body, its Committees, and those of the Planning and Zoning Commission shall consist of the Audio Recording of the meetings together with a written synopsis of all agenda items and votes.

AN ORDINANCE APPOINTING THE LAW FIRM OF BAKER & HOSTETLER LLP AND CAROLE S. RENDON AS SPECIAL COUNSEL FOR THE CITY OF BEACHWOOD, OHIO, ESTABLISHING COMPENSATION; AND DECLARING THIS TO BE AN URGENT MEASURE

WHEREAS, in accordance with BCO 133.03, "Hiring of Assistants or Special Counsel", City Council desires to engage the firm of Baker & Hostetler LLP and appoint attorney Carole S. Rendon as Special Counsel for the City of Beachwood, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Beachwood, County of Cuyahoga and State of Ohio, that:

Section 1:

(a) Council, by and through its President of Council, is hereby authorized and directed to enter into an agreement to engage the firm of Baker & Hostetler LLP and appoint attorney Carole S. Rendon as Special Counsel for the City of Beachwood, Ohio to provide legal services related to an employment matter.

(b) The law firm of Baker & Hostetler LLP is engaged and Carole S. Rendon is hereby appointed as Special Council as of August 23, 2019.

(c) All work shall be compensated by the City in an amount not to exceed Thirty Thousand Dollars (\$30,000.00).

Section 2: It is found and determined that all formal actions and deliberations of Council and its committees relating to the passage of this legislation that resulted in formal action were in meetings open to the public where required by Chapter 105 of the Codified Ordinances of the City.

Section 3: This Ordinance is declared to be an urgent measure immediately necessary for the preservation of public peace, health or safety or the efficient operation of the City, and for the further reason that the legal services provided herein are needed for the current operation of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

WHEREFORE, this Ordinance shall be in full force and effect from and after the earliest date permitted by law.

Attest: I hereby certify this legislation was duly adopted on the 22nd day of August, 2019, and presented to the Mayor for approval or rejection in accordance with Article III, Section 8 of the Charter on the 23rd day of August, 2019.

Whitney M. Crank
Clerk

Approval: I have approved this legislation this 23rd day of August, 2019 and filed it with the Clerk.

Mayor

Pursuant to Beachwood City Charter Article III, Section 8, subsection 2 and 3. If the Mayor does not sign passed Legislation within seven (7) days after passage by Council, it shall take effect as though the Mayor has signed it.

Attest: This Legislation became effective on the 30th day of August, 2019.

Whitney M. Crank
Clerk