

**IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

<p>STATE OF OHIO EX REL. MIKE BURKONS 2466 Richmond Road Beachwood, Ohio 44122</p> <p style="text-align: center;">Relator,</p> <p style="text-align: center;">vs.</p> <p>CITY OF BEACHWOOD 25325 Fairmount Boulevard Beachwood, Ohio 44122</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: right;">Complaint</p> <p>Case No. . CA 20 110139</p> <p>Original Action for Writ of Mandamus</p> <p>Verified Complaint for Writ of Mandamus</p>
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I. Introduction

1. Relator Mike Burkons, an elected member of Council for the City of Beachwood, on behalf himself and all taxpayers of the City, hereby seeks a writ of mandamus under R.C. 733.57, 733.58, and 733.59, Art. III, Sec. 5.3(I), Art. V, Sec. 2.1, 2.3 and Art. IV, Sec. 4 of the Beachwood Charter, Beachwood Codified Ordinance 133.02 and 133.03, and R.C. 2731 to compel the City's Mayor and Council to fulfill their respective legal duties to terminate "special prosecutor" Stephanie Scalise, who is purporting to represent the City in pending criminal proceedings against Burkons, despite that Council never passed an ordinance as required to authorize any such representation.
2. For good reason, Beachwood's Charter and Codified Ordinances (the "B.C.O.") provide that an attorney may not represent the City unless the representation is specifically authorized "by ordinance of Council." B.C.O. 133.02-03; Charter, Art. V, Sec. 2.1, 2.3. These provisions help ensure that attorneys who represent the City are ultimately accountable to the City's voters.
3. Here, there is no dispute that Council has not passed any ordinance authorizing Scalise's representation of the City.

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4. Rather, the two attorneys who comprise the City's Law Department—each of whom have admitted that conflicts of interest bar them from participating in any such prosecution of Burkons—have, apparently for political and retaliatory purposes, attempted to circumvent the need for Council approval of Scalise's appointment by secretly engaging her without authority, and then attempting to sanitize the unauthorized engagement by misleading the Shaker Heights Municipal Court¹ into "appointing" Scalise as "special prosecutor" for the City. More specifically, the Law Department filed a motion for "appointment of special prosecutor," which was granted by the Shaker Heights Municipal Court, and which misleadingly stated that Scalise had already been "engaged" by the City, omitting that Scalise was not engaged pursuant to the legally necessary Council ordinance.

5. Absent any emergency need for a court to appoint an attorney for a municipality whose laws require that attorneys may not represent the municipality unless specifically authorized by its elected officials, a court may not circumvent that municipality's laws by "appointing" an attorney to represent that municipality based on an unauthorized motion by that municipality's attorneys requesting the same, especially where, as here, the attorneys requesting the "appointment" are otherwise barred by conflicts of interest from participating in the matter.

6. Because Scalise's purported representation of the City is contrary to the City's laws, the Mayor and Council have a clear legal duty to terminate that representation. Specifically, Art. IV, Sec.

¹ While the prosecution against Burkons was originally instituted in the Shaker Heights Municipal Court (No. 20-ARW-00001), the Shaker court immediately transferred the case, *sua sponte*, to the Chardon Municipal Court (No. 20-CRB-00858), based on a finding that "it appears that a fair and impartial trial cannot be held in this court." Burkons then sought dismissal of the case in the Chardon Court, because "R.C. 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed 'within its territory' or 'within the limits of its territory'" *Cheap Escape Co. v. Haddock, L.L.C.*, 120 Ohio St. 3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 18, ¶ 22. After the Chardon court denied the motion to dismiss, Burkons then, on November 23, 2020, filed in the 11th District Court of Appeals for a writ of prohibition to prevent the Chardon court's unauthorized exercise of jurisdiction over him. On December 4, 2020, the Eleventh District Court issued an alternative writ staying the criminal proceedings in Chardon and ordering the Chardon court to "show proper cause in response to the alternative writ." *State ex rel. Burkons v. Hon. Terri Stupica*, 11th Dist. Geauga No. 2020-G-0274.

4, of the Charter requires the Mayor to “supervise the administration of the City’s affairs, exercise control over all Departments and Divisions, except those reserved to Council,” and “require that all laws, Ordinances, Resolutions, and Regulations are enforced.” And Art. III, Sec. 5.3(I) of the Charter requires Council to implement “such legislation, rules and/or regulations,” or take any “other acts as Council shall require to implement the Charter or any requirement of Council.”

7. Burkons has repeatedly requested, pursuant to R.C. 733.57, 733.58, and 733.59, that the Law Director, Mayor, and Council fulfill their respective duties to terminate Scalise’s unauthorized representation of the City in the proceedings against him.

8. Because the Law Director, Mayor, and Council have not acted to terminate Scalise’s unauthorized representation of the City, and do not apparently intend to, Burkons is left with no choice—as is his right under R.C. 733.59 and R.C. 2731—to seek a writ of mandamus from this Court ordering them to do the same, and ensuring on behalf of the citizens of Beachwood that attorneys do not represent the City unless they are lawfully authorized to do so.

II. Parties

9. Petitioner Mike Burkons is a resident and taxpayer of the City and a duly elected member of Council.

10. Martin Horwitz is the duly elected mayor of Respondent City of Beachwood; Barbara Janovitz, Justin Berns, Alec Isaacson, Eric Synenberg, and June Taylor are duly elected members of Beachwood’s City Council, and Diane Calta is the City’s Law Director, who is appointed and supervised by Council pursuant to Art. V. Sec. 2.1 of the Charter. All of these officers of the City have refused to comply with their sworn duties to ensure that the City’s Charter and Code of Ordinances are upheld by terminating Stephanie Scalise unauthorized legal representation of the City.

III. Jurisdiction

11. This Court has original jurisdiction over this action under R.C. 2731.02 and Art. IV § 3(B)(1)(d) of the Ohio Constitution.
12. Burkons has verified this complaint by affidavit (**Exhibit A**) as required by R.C. 2731.04.
13. On October 22, 2020, Burkons served upon Calta in her capacity as law director a written taxpayer demand under R.C. 733.56 and 733.59 asking her to “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).” **Exhibit B**, p. 1.
14. On November 2, 2020, Burkons received correspondence from attorney Kenneth Fisher, who claimed to represent the City regarding Burkons’ taxpayer demand, in which he asserted that the “allegations against the City ... and Law Director Calta are without merit and any Taxpayer Action is without legal or factual basis,” thereby making clear that the City would not take action in response to Burkons’ taxpayer demand. **Exhibit C**, p. 3.
15. On November 19, 2020, Burkons sent additional correspondence to Fisher communicating that “[b]ased on the lack of response from the City ... [Burkons] will proceed on the understanding that [his] written demand ... submitted to the Beachwood Law Director on October 22 will not be met by the City.” **Exhibit D**. This correspondence also stated that Burkons was “demanding under R.C. 733.56 that the Law Director file an action to enjoin Ms. Scalise’s unauthorized representation of the City” and “under R.C. 733.58 that the Mayor and City Council use their affirmative powers under the Charter and Code ... to immediately terminate [Scalise’s] unauthorized representation ...”
Id.
16. On November 30, 2020, having received no response, Burkons sent a follow-up demand directly to Mayor Horwitz and Council, demanding that they fulfill their own duties under the

Charter to terminate Scalise's unauthorized representation of the City. **Exhibit E.**

17. On December 4, 2020, Burkons sent a final demand to City officials, reiterating his request that Scalise's unauthorized representation of the City be terminated, and further demanding the same of Mr. Fisher's similarly unauthorized representation. **Exhibit F.**²

18. Other than the November 2 correspondence from Fisher, which itself constituted a refusal to take action on Burkons' demand, City officials have otherwise failed to make any response.

19. Through this October 22, November 19, November 30, and December 4 correspondence, Burkons has satisfied the procedural requirements of R.C. 733.59 by demanding that City officials uphold their respective duties to terminate Scalise's unauthorized representation of the City.

20. Because Calta and other City officials have failed, upon several written demands, to make an application as provided for in R.C. 733.57–58, Burkons has instituted this taxpayer action to enforce the public's right of ensuring that the City's laws and ordinances are upheld.

21. Burkons has further complied with his obligation under R.C. 733.59 to provide security for the costs of this action.

IV. Beachwood Charter and Code Provisions at Issue

22. Art. V, Section 2.1 of the Charter provides that the "Department of Law shall be headed by a Law Director who shall be appointed and *supervised by Council*" and that "*Council may also provide for Assistant Law Directors and special legal counsel.*" (Emphasis added).³

23. Art. 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 "shall act as the City's prosecuting attorney before the Mayor's Court, Municipal Court, and upon appeals." *Id.* This provision also

² As discussed below (¶ 28, **Ex. H**), at the time that Fisher responded to Burkons' taxpayer demand, Council had not authorized Fisher to represent the City in this matter, but eventually did so by an emergency ordinance that was approved on December 7, 2020.

³ Copies of the relevant Charter and Code provisions are attached as **Exhibit G**.

requires that “The Law Director shall perform all duties required by this Charter, the Mayor and Council and all other duties now or hereafter imposed by law upon legal counsel for cities *unless otherwise provided by Ordinance by Council.*” (Emphasis added).

24. B.C.O. 133.02 provides that “The Law Director shall serve the Mayor, Council, the administrative departments and the officers, boards and commissions of the [City] as legal counsel in connection with [City] affairs, and *subject to the direction of the Mayor and Council*” and, like the Charter, expressly mandates that the Law Director “shall represent the [City] in all proceedings in court or before any administrative board or commissions” and “perform all other duties now or hereafter imposed ... *unless otherwise provided by ordinance of Council[.]*” (Emphasis added).

25. B.C.O. 133.03, which specifically pertains to the “hiring of assistants or special counsel,” states that “[w]hen 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 ...and agree to pay such assistants and/or special counsel such reasonable compensation *as shall be approved by Council.*” (Emphasis added).

26. Further, Art. III, Sec. 5.3(I) of the Charter requires that the elected members of Council provide for “such legislation, rules, and/or regulations, or *other acts as Council shall require to implement the Charter or any requirement of Council.*” (Emphasis added). And Art. IV, Sec. 4 of the Charter mandates that Horwitz, as Beachwood’s mayor, “supervise the administration of the City’s affairs, exercise control over all Departments and Divisions, except those reserved to Council,” and “*require that all laws, Ordinances, Resolutions, and Regulations are enforced.*” (Emphasis added).

V. Statement of Facts

27. In August 2019, City officials demonstrated their awareness of the requirements imposed by the above-discussed Charter and B.C.O. provisions when Council considered and approved Ordinance No. 2019-95 for the express purpose of complying “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,” and to provide for “compensat[ion] by the City in an amount not to exceed Thirty Thousand Dollars (\$30,000.00).” **Ex. B**, Ex. 6, p. 3.

28. Moreover, just this week, in response to Burkons’ allegations that, as with Scalise, Council had not authorized Mr. Fisher’s representation of the City with respect to this lawsuit, Council considered and approved an emergency ordinance on December 7, 2020, directing Mayor Horwitz to “engage the firm of Kenneth J. Fisher Co., LPA and appoint Kenneth J. Fisher as Special Counsel for the City of Beachwood ... to provide legal services related to a lawsuit currently being threatened against the City,” *i.e.*, this one, “based upon an hourly rate of Two Hundred and Fifty Dollars (\$250.00) per hour.” **Exhibit H**. *See also Ex. F*.

29. Despite the clarity of the above provisions and the City’s compliance with them in other comparable instances, with respect to the Burkons case they have been disregarded, apparently so as to allow the conflicted Law Director and Assistant Law Director to secretly engineer politically motivated and retaliatory criminal proceedings against Burkons through a supposedly “independent” prosecutor, Scalise, over whom they could exercise influence. *See Ex. B*, p. 2–5.⁴

30. On September 14, 2020, the City’s Law Department, through Assistant Law Director

⁴ In the representation at issue in this lawsuit, Scalise is purporting to prosecute 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, based on a wildly unprecedented and unsupportable interpretation of an Ohio statute, R.C. 2921.45, criminalizing “interference with civil rights.” *See Ex. B*, p. 2–5. While the wildly baseless and transparently retaliatory nature of Scalise’s effort to prosecute Burkons is not primarily relevant to her lack of authority to represent the City, which is at issue in this mandamus action, it does go to show Calta’s and Supler’s motive to circumvent the need for Council’s approval of the engagement so that they could select their own “special counsel” whom they could influence into working as a pro bono freelance prosecutor to pursue such extraordinarily unwarranted charges against one of their political opponents. *Id. See also* ¶ 32, below. Indeed, this episode shows exactly why Beachwood’s Charter and Code require Council approval before an attorney can take action on the City’s behalf. *Id.*

Nathalie Supler, filed a motion to withdraw as prosecutor from the criminal proceedings that she— despite her admitted conflict of interest— instituted against Burkons in the Shaker Heights Municipal Court, where the case was then pending (No. 20-CRB-00722). *See* **Ex. B**, Ex. 2, p. 2–3 (“[T]his motion is necessary to avoid any appearance of impropriety or a suggestion of conflicting interest.”). This motion also stated that the City “immediately engaged” Scalise to investigate the alleged criminal conduct at issue, but omits mentioning that this engagement was not authorized by Council as required by the Charter and Code. **Ex. B**, Ex. 2, p. 2–3.

31. Following Supler’s representation that the City had already engaged Scalise to act on its behalf, the Shaker court granted the motion, stating only that “Beachwood city prosecutor[’]s motion to withdraw from case is granted.” *Id.*, p. 1.

32. In response to a public records request issued by Burkons, the Law Director admitted that Council had not adopted an ordinance authorizing Scalise to act on the City’s behalf, and further stated that Scalise had agreed to work for the City free of charge, and without any written engagement agreement. **Ex. B**, Ex. 1, p. 1, 3. The Law Director has tried to defend Scalise’s unauthorized representation by claiming that it “is not in conflict with the City’s Charter nor its Codified Ordinances,” purportedly because Scalise was “appointed by the [Shaker Heights Municipal] Court” based on Supler’s misleading and unauthorized motion requesting the same. *Id.*

33. But, absent any emergency need, the Shaker Heights Municipal Court has no authority to override the laws governing the process by which the City of Beachwood selects which attorneys act on its behalf, including the specific Charter and Code provisions set forth above which render that responsibility to Council, which provisions the Council and Mayor have a sworn duty to uphold.

34. Nor has the Shaker Heights Municipal Court claimed that it has any such power to control the process by which Beachwood hires and authorizes attorneys to act on its behalf. Here, again, the Shaker court only “appointed” Scalise on the basis of Supler’s representation that the City had

already “engaged” her, with no reason to doubt that this “engagement” was made properly in compliance with the City’s laws governing the same.

35. In claiming that Burkons’ demands were made “without legal or factual basis[,]” the City has advanced the argument that the Shaker court had the “inherent authority” to appoint Scalise as “special prosecutor” in the Burkons case, despite having also acknowledged that such authority exists only when there is not “a specific statute controlling the appointment of a Special Prosecutor.” **Ex. C**, p. 2–3. As discussed above, B.C.O. 133.03 specifically governs the process by which “assistants or special counsel” must be hired in order to represent the City in its legal affairs. The Shaker court therefore had no “inherent authority” to override this explicit statutory process.

VI. Claim for Writ of Mandamus

36. “To be entitled to a writ of mandamus, the [relator] must establish a clear legal right to the requested relief, a clear legal duty on the part of respondent to grant such relief, and the lack of an adequate remedy in the ordinary course of law.” *State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 2018-Ohio-3609, 119 N.E.3d 1238, ¶ 11.

37. When, as here, “a city charter requires that city council *shall* enact ordinances to provide for the enforcement or execution of a particular provision of the charter, a mandatory duty is placed upon city council to comply with that requirement of the charter, and mandamus will lie to compel the council to act.” *State ex rel. Ohio Motorists Assn. v. Masten*, 8 Ohio App.3d 123, 126, 456 N.E.2d 567 (8th Dist.1982) (emphasis in original), quoting *State ex rel. Scott v. Masterson*, 173 Ohio St. 402, 183 N.E.2d 376 (1962).

38. Similarly, the City’s residents and taxpayers “have a clear legal right to compel the council and city to comply with charter provisions.” *State ex rel. Vanna v. Maple Hts. City Council*, 8th Dist. Cuyahoga No. 55068, 1988 Ohio App. LEXIS 5215, *7 (Dec. 29, 1988). Thus, Burkons, as a “citizen[] and taxpayer[] of the City ... ha[s] a sufficient interest in the execution of the laws to

maintain this action ... [and] ha[s] a clear legal right to the relief prayed.” *Id.*, 1988 Ohio App. LEXIS 5215, *8, citing *State ex rel. Scott v. Masterson*, 173 Ohio St. 402, 404, 183 N.E.2d 387 (1962).

39. Indeed, the Supreme Court of Ohio has “recognized the public’s interest in mandamus actions to force compliance with charter provisions” because, if public officials “can ignore, with impunity, the mandates of a constitution or city charter, then it is certain that the faith of the people in constitutional government will be undermined and eventually eroded completely.” *State ex rel. Cater v. City of N. Olmsted*, 69 Ohio St.3d 315, 323, 1994-Ohio-488, 631 N.E.2d 1048, quoting *Cleveland ex rel. Neelon v. Locher*, 25 Ohio St.2d 49, 52, 266 N.E.2d 831 (1971).

40. Additionally, since the questions raised herein concern a “public right and the object of the mandamus is to procure the enforcement of public duty, the people are regarded as the real party and the relator need not show that he has any ... special interest in the result, since it is sufficient that he is interested as a citizen or taxpayer in having the laws executed and the duty in question enforced” *State ex rel. Nimon v. Springdale*, 6 Ohio St.2d 1, 4, 215 N.E.2d 592 (1966), quoting 35 OHIO JURISPRUDENCE 2D 426, Section 141; *State ex rel. Ohio Academy of Trial Lawyers v. Shevard*, 86 Ohio St.3d 451, 1999 Ohio 123, 715 N.E.2d 1062, paragraph one of the syllabus.

41. Moreover, because Burkons is seeking to compel the City’s officials to comply with its own laws, Burkons “has standing to enforce a public right on behalf of [the City], regardless of private or personal benefit [to him, because] ... despite [any] private interests in the outcome of th[e] litigation, the relief ... s[ought] inures to the benefit of the public.” *State ex rel. Fisher v. City of Cleveland*, 8th Dist. Cuyahoga No. 83945, 2004-Ohio-4345, ¶ 17, ¶ 20.

42. There is no adequate remedy in the ordinary course of law to compel City officials to comply with the mandatory provisions of the Charter and B.C.O. In such circumstances, this Court has repeatedly held that “mandamus is the appropriate remedy to compel a governmental entity to comply with statutory edict ... ‘whether the source of the duty involved is a city charter provision or

a state statute.” *OAPSE/AFSCME Local 4 v. Berdine*, 174 Ohio App.3d 46, 2007-Ohio-6061, 880 N.E.2d 939, ¶ 15-25 (8th Dist.), quoting *State ex rel. Ohio Motorists Assn. v. Masten*, 8 Ohio App.3d 123, 126, 456 N.E.2d 567 (8th Dist.1982); *See also Fischer v. Damm*, 36 Ohio App. 515, 524; 173 N.E. 449 (8th Dist.1930) (“[A] different state of the law exists where the remedy is sought against an officer or board who failed to perform a duty expressly enjoined by law or ordinance. In such a case ... mandamus alone is the remedy; and no resort can be had to any other remedy if by resort to an action in mandamus obedience to a law or ordinance can be fully accomplished.”).

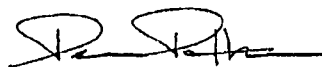
43. Here, there is no doubt that where it becomes necessary for an attorney to represent the City of Beachwood, the citizens of Beachwood have a right under the Charter and Code to have their interests represented by an attorney who is approved and authorized to represent the City by ordinance of Council. Art. V, Sections 2.1 and 2.3 of the Charter and B.C.O. Sections 133.02-03. Further, the Charter imposes a clear legal duty upon Council (Art. III, Sec. 5.3(I)) and Mayor Horwitz (Art. IV, Sec. 4.4) to enforce these provisions, which they must do here by terminating Scalise’s unauthorized representation of the City.

VII. Prayer for Relief

WHEREFORE, Burkons respectfully requests that this Court (1) issue a writ of mandamus compelling the City, through its Mayor and Council, to terminate Stephanie Scalise’s unauthorized representation of the City as described above; (2) issue a peremptory writ under R.C. 2731.06 because “the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it;” or an alternative writ under R.C. 2731.06 and R.C. 2731.07 otherwise barring Scalise from acting on the City’s behalf pursuant to the unauthorized representation until this matter is resolved, based on a finding that “the [R]elator’s claim for the writ ‘may have merit,’” and set a schedule for the submission of evidence and merit briefs. *State ex rel. Morley v. Lordi*, 72 Ohio St. 3d 510, 514, 1995-Ohio-182, 651 N.E.2d 937 (1995); (3) order

Respondent to pay Relators' costs and reasonable attorneys' fees under R.C. 733.61; and (4) grant any other relief in law or equity to which Relator is entitled and that the Court deems equitable, just, or proper.

Respectfully submitted,



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**IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO EX REL. MIKE BURKONS Relator, vs. CITY OF BEACHWOOD, Respondent.	Case No. _____ Original Action for Writ of Mandamus Affidavit of Mike Burkons
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I, Mike Burkons, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am over eighteen years of age, am a resident and taxpayer of the City of Beachwood, and am a duly elected member of Beachwood's City Council.
2. I have reviewed the Verified Complaint in the above-captioned matter, to which this Affidavit is attached as **Exhibit A**.
3. The facts set forth in the Verified Complaint are true and accurate as known to me, and if called upon, I am competent to and will testify to such facts.
4. The exhibits attached to and incorporated by reference in the Verified Complaint are true and accurate copies of the Beachwood Charter and excerpts from Beachwood's Codified Ordinances, as well as correspondence and other documents that have been generated in connection with the proceedings at issue in the above-captioned matter.

I affirm the above to be true to the best of my knowledge under penalty of perjury.

State of Ohio
County of Cuyahoga
Michael Burkons

Signature of Affiant

Date

Sworn to and subscribed before me on 12/8/2020 at Shaker Hts, Ohio.

Notary Public



SHUKRIYYAH L. ATKINS
Notary Public, State of Ohio
My Comm. Expires Nov. 11, 2025

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 'Peter 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

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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. Nouredine 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

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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

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

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

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SHAKER HEIGHTS MUNICIPAL COURT
(Traffic/Criminal Case Division)

20CRB00722

Journal Entry Sheet

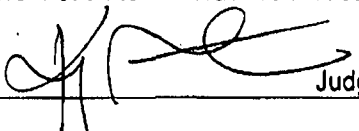
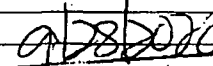
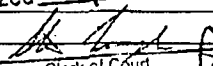

BEACHWOOD

-vs-

MICHAEL BURKONS

Offense(s) Charged:
2921.45 INTERFERING/CIVIL RTS

Attorney for Defendant:

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

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 0000 1

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 Scallise, 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 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)	CASE NO.:
)	
PLAINTIFF,)	
)	JUDGE K.J. MONTGOMERY
-vs-)	
)	<u>ORDER</u>
MICHAEL BURKONS,)	
)	
DEFENDANT.)	

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 *****

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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 Councilmember to insert themselves into the issue two years later?

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8/17/2020

Mail - James.Pasch@beachwoodohio.com

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

8/17/2020

Mail - James.Pasch@beachwoodohio.com

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.

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<https://mail.beachwoodohio.com/owa/#path=/mail/search>

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.

8/17/2020

Mail - James.Pasch@beachwoodohio.com

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

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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]



Peter Pattakos <peter@pattakoslaw.com>

20CRB00722, Beachwood v. Michael Burkons

Stephanle 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.

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EXHIBIT 5

10/22/2020

The Pattakos Law Firm LLC Mail - 20CRB00722, Beachwood v. Michael Burkons

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]

Electronically Filed 12/08/2020 14:55 / / CA 20 110139 / Confirmation Nbr. 2131749 / CLCEJ

**BEACHWOOD CITY COUNCIL MINUTES OF THE SPECIAL COUNCIL MEETING HELD
AT BEACHWOOD CITY HALL, COUNCIL CHAMBERS, 25325 FAIRMOUNT
BOULEVARD, ON THURSDAY, AUGUST 22, 2019 AT 6:00 P.M.**

The meeting was called to order at 6:03 P.M. by Council President Brian Linick.

ROLL CALL: Present: J. Berns, A. Isaacson, B. B. Janovitz,
B. Linick, J. Pasch, E. Synenberg, J. Taylor
Absent: None
Also Present: D. Calta

CITIZENS REMARKS

None.

COMMITTEE OF THE WHOLE

1. An Ordinance appointing the Law Firm of BakerHostetler and Carole S. Rendon as Special Counsel for the City of Beachwood, Ohio, establishing Compensation; and declaring this to be an urgent measure.

Moved by B. Linick, seconded by A. Isaacson, that Ordinance No. 2019-95 be placed on final reading.

ROLL CALL Yes: J. Berns, A. Isaacson, B. B. Janovitz,
B. Linick, J. Pasch, E. Synenberg, Taylor
No: None.
Abstain: None.
Not Voting: None.
MOTION ADOPTED-RULES SUSPENDED

Moved by B. Linick, seconded by A. Isaacson, that Ordinance No. 2019-95 be adopted.

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

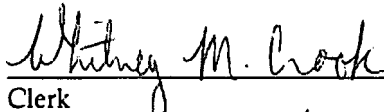
ADJOURNMENT

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.

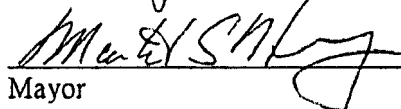
ROLL CALL	Yes:	J. Berns, A. Isaacson, B. B. Janovitz, B. Linick, J. Pasch, E. Synenberg, J. Taylor
	No:	None.
	Abstain:	None.
	Not Voting:	None.

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.

INTRODUCED BY: B. Linick

ORDINANCE NO. 2019-95

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.

ORDINANCE NO. 2019-95

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. Cook
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. Cook
Clerk

KENNETH J. FISHER CO., L.P.A.

ATTORNEYS AT LAW

50 PUBLIC SQUARE, SUITE 2100
CLEVELAND, OHIO 44113-2204

TEL (216) 696-7661 • FAX (216) 696-0439
www.kenfisherlpa.com

KENNETH J. FISHER
kfisher@fisher-lpa.com

DENNIS A. NEVAR
dnevar@fisher-lpa.com

November 2, 2020

VIA EMAIL ONLY: peter@pattakoslaw.com

Peter Pattakos, Esq.
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333

**Re: City of Beachwood
Taxpayer Action - Councilman Michael Burkons**

Dear Mr. Pattakos:

Please be advised the undersigned represents the City of Beachwood in regard to the legal issues detailed in your correspondence dated October 22, 2020.

In response thereto, please note the following:

- 1) Consistent with the City's Expenditure Policy, copy enclosed, Law Director Diane Calta has authority to make expenditures of up to \$5,000.00 without City Council approval.

As detailed in City of Beachwood Assistant Law Director/Prosecutor Nathalie E. Supler's Motion of Prosecuting Attorney to Withdraw as Counsel and Appointment of Special Prosecutor (the "Motion to Withdraw") initially filed in Shaker Heights Municipal Court Case No. 20ARW00001¹ on September 14, 2020, Attorney Stephanie Scalise (who agreed to provide "mutual aid" assistance without compensation) was engaged in an investigatory capacity to "gather and review all of the relevant evidence" and make an independent probable cause determination of possible criminal conduct.

On September 28, 2020, the Shaker Heights Municipal Court granted the Motion to Withdraw appointing Attorney Scalise as Special Prosecutor for the City of Beachwood.

¹Administrative Case designation was assigned Shaker Heights Municipal Court Case No. 20CRB00772 and subsequently transferred sua sponte by the Shaker Heights Municipal Court to the Chardon Municipal Court (Case No. 2020CRB00858) on October 6, 2020.

- 2) In the absence of a specific statute controlling the appointment of a Special Prosecutor, the Court of Common Pleas has the inherent power pursuant to Ohio Revised Code Section 2941.63 to appoint a Special Prosecutor where the acting prosecutor asserts conflicts of interest. *Price v. State*, 35 Ohio St. 601 (1880); *State ex rel. Thomas v. Henderson*, 123 Ohio St. 474, 175 N.E. 865 (1931); *State ex rel. Williams v. Zaleski*, 12 Ohio St.3d 109, 465 N.E.2d 861 (1984); *State ex rel. Corrigan v. Seminatore*, 66 Ohio St.2d 459, 423 N.E.2d 105 (1981); *State ex rel. Johnson v. Talikka*, 1994 Ohio App. LEXIS 1402 (11th App. Dist. 1994); *State v. Bunyan*, 51 Ohio App.3d 190, 555 N.E.2d 980 (3rd App. Dist. 1988); *In re Appointment of Special Prosecutor*, 2002 Ohio App. LEXIS 1865 (6th App. Dist. 2002).

Ohio Revised Code Section 2941.63 vests the Court of Common Pleas with broad discretion in appointing prosecutorial counsel in criminal matters. *Zaleski*, supra.

Per Ohio Revised Code Chapter 1901, it is clear that the inherent authority of the Court of Common Pleas to appoint a Special Prosecutor pursuant to Ohio Revised Code Section 2941.63 extends to Municipal Courts, to wit:

- A) Municipal Courts have the power to exercise any other powers that are necessary to give effect to the jurisdiction of the Court, including the issuance of any necessary orders for which authority is conferred upon the Courts of Common Pleas or a Judge of the Court of Common Pleas (ORC Section 1901.13).

As in the present case, it is clear that the Shaker Heights Municipal Court had the inherent authority and broad discretion to appoint a Special Prosecutor, without Beachwood City Council approval, where the acting prosecutor asserted a conflict of interest.

- 3) Separate from Municipal Court Special Prosecutor appointment procedures, in order to maintain an action under Ohio Revised Code Section 733.59, the taxpayer's aim must be to enforce a public right, regardless of any private motive. *State ex rel. White v. Cleveland*, 34 Ohio St.2d 37, 295 N.E.2d 665 (1973); *State ex rel Casper v. Dayton*, 53 Ohio St.3d 16, 558 N.E.2d 49 (1990). When the taxpayer's aim is merely for his or her own benefit, no public right exists and a taxpayer action under Ohio Revised Code Section 733.59 cannot be maintained. *Dayton*, supra.

In the instant case, it is clear that your client's demand that "special counsel" be appointed other than Attorney Scalise is solely for his own benefit where:

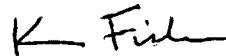
Peter Pattakos, Esq.
November 2, 2020
Page 3

- A) Attorney Scalise was appointed as a Special Prosecutor in accordance with applicable law and has agreed to provide “mutual aid” assistance without compensation;
- B) Your client was aware of Attorney Scalise’s position relative to the underlying criminal proceeding per her email correspondence of October 16, 2020, as attached as Exhibit 5 to your correspondence of October 22, 2020; and
- C) There is no valid argument that University Heights Prosecutor Scalise lacks the professional expertise, experience and/or independent judgment to properly act as an unbiased Special Prosecutor for the City of Beachwood.

Accordingly, your client’s allegations against the City of Beachwood and Law Director Calta are without merit and any Taxpayer Action is without legal or factual basis.

Thank you for giving this matter your attention and do not hesitate to contact me with any questions.

Very truly yours,



Kenneth J. Fisher

KJF/dan

enc.

**CITY OF BEACHWOOD
FINANCE DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Department Heads
FROM: Larry A. Heiser, Finance Director
RE: Change in Purchasing Procedure
DATE: December 20, 2018

In an effort to monitor the City's purchases, the following changes in procedure shall be effective immediately:

- Any equipment either individually or in bulk that exceeds \$5,000.00, regardless of whether or not this item was previously identified in your original budget request, should be forwarded to the Mayor for review and/or approval prior to submittal to the Finance Department. If the purchase was not in your budget, please also provide an explanation for the purchase as well as your recommendation for where the funding should be taken.
- Any non-equipment that exceeds \$5,000.00, other than routine purchases such as office supplies and auto parts, should be forwarded to the Mayor for review and/or approval prior to being sent to the Finance Department – unless there is a contract in place.
- Finally, any purchases that appear unusual in nature will be forwarded to the Mayor by the Finance Director.

Please note that obtaining the Mayor's approval does not allow circumvention of the City's approved Purchasing Policy regarding competitive bidding. The Purchasing Supervisor is required to obtain at least three (3) written quotes on all purchases in excess of \$1,000.00. However, if you prefer, your department can obtain three (3) competitive quotes that should be attached to the Purchase Requisition and forwarded with the request to the Purchasing Supervisor. The Finance Department will then issue a Purchase Order, at which time the product may be ordered.

For instances where a specific vendor is required, please provide documentation supporting the use of the vendor.

Thank you for cooperating.

cc: Carrol Morrison, Purchasing Supervisor
Martin S. Horwitz, Mayor

On Thu, Nov 19, 2020 at 4:48 PM Peter Pattakos <peter@pattakoslaw.com> wrote:
Dear Mr. Fisher,

Based on the lack of response from you or your client we will proceed on the understanding that Mr. Burkons' written demand I submitted to the Beachwood Law Director on October 22 will not be met by the City. Before we proceed with a lawsuit under R.C. 733.59, I need to make clear that Burkons is not only demanding under R.C. 733.56 that the Law Director file an action to enjoin Ms. Scalise's unauthorized representation of the City. He is also demanding under R.C. 733.58 that the Mayor and City Council use their affirmative powers under the Charter and Code—including under Art. III, Sec. 5.3(f), Art. V., Sec. 4, and Art. IV, Sec. 2.1 of the Charter and B.C.O. 133.02—to immediately terminate that unauthorized representation, for the reasons stated in my Oct. 22 letter and my Nov. 2 email to you in response to your Nov. 2 letter to me.

Please advise immediately if the Mayor or Council intends to fulfill their duties as requested above and/or if this request is unclear in any way.

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.

EXHIBIT D

November 30, 2020

By U.S. Priority Mail and email to mayor@beachwoodohio.com; barbara.janovitz@beachwoodohio.com; justin.berns@beachwoodohio.com; alec.isaacson@beachwoodohio.com; eric.synenberg@beachwoodohio.com; june.taylor@beachwoodohio.com

Martin Horwitz, Justin Berns,
Alec Isaacson, Barbara Janovitz,
Eric Synenberg, and June Taylor
City of Beachwood
25325 Fairmount Boulevard
Beachwood, Ohio 44122

Re: Taxpayer demand under R.C. 733.56–59 to enjoin “special prosecutor” Stephanie Scalise’s unauthorized representation of the City of Beachwood

Dear Mayor Horwitz and Beachwood City Council members:

As you are likely aware, I represent Councilman Mike Burkons and have in recent weeks submitted correspondence to Beachwood Law Director Diane Calta exercising Burkons’ right under Ohio Revised Code Sections 733.56–59 to demand that Calta fulfill her obligation to ensure the immediate termination of “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). The basis for this demand 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,” and no such ordinance has been enacted here. *See* Charter, Art. V Sec. 2.1, 2.3; B.C.O. Sec. 133.02–03.

To date, Scalise’s unauthorized representation of the City has continued unabated. Thus, in a final effort to avoid litigation over this matter, Burkons is requesting that you fulfill your own duties and responsibilities to Beachwood’s citizens where Ms. Calta has failed to do so by ensuring that the Charter and Code provisions at issue are upheld.

Specifically, as set forth in my October 22 letter to Ms. Calta, a copy of which is enclosed with this letter (**Exhibit A**) and incorporated by reference herein,

- 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).
- 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,” “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,*” and “shall perform such other duties consistent with his/her office *as the Mayor or Council may request.*” (Emphasis added).

Additionally,

- Art. III, Sec. 5.3(I) of the Charter requires Council to implement “such legislation, rules and/or regulations,” or take any “*other acts as Council shall require to implement the Charter or any requirement of Council.*” (Emphasis added).
- And Art. IV, Sec. 4, requires the Mayor to “supervise the administration of the City’s affairs, exercise control over all Departments and Divisions, except those reserved to Council,” and “*require that all laws, Ordinances, Resolutions, and Regulations are enforced.*” (Emphasis added).

These provisions, which you have taken a sworn oath to uphold, require you—as the elected Mayor and Council members of the City of Beachwood—to, at minimum, notify Ms. Scalise that her representation of the City is unauthorized by law and therefore terminated.

From there—with Ms. Calta and Assistant Law Director Nathalie Supler both prohibited from advising the City on this matter due to admitted conflicts of interest—if you deem it necessary to retain an attorney to entertain the question of whether Burkons should be prosecuted over the events at issue, then Council may adopt an ordinance to retain an attorney as the Charter and Code require.

What you may not do is avoid accountability over this matter by pretending that you are somehow bound by a lawless handshake agreement reached by an admittedly conflicted Assistant Prosecutor (Supler) with one of her friends (Scalise) in an apparent conspiracy to engineer a transparently retaliatory prosecution based a wildly unprecedented and unsupportable interpretation of an Ohio statute, 2921.45, criminalizing “interference with civil rights.”

The retaliatory and otherwise unlawful nature of Scalise’s appointment, as well as the utter meritlessness of the legal position she has taken on the City’s behalf pursuant to her unauthorized representation, are apparent as set forth in my October 22 letter. Thus, I hope you will be glad to put an expeditious end to this unfortunate chapter in Beachwood history by simply terminating Scalise and being done with it. But if you nevertheless determine, in your discretion, that an attorney need be appointed here, it should be clear that this attorney need be someone other than Scalise, whose decision to accept the unlawful and conflict-ridden appointment, and her disregard for

fundamental constitutional principles in pursuing charges against Burkons pursuant to that appointment, are independently and relatedly disqualifying.

Finally, you must also ensure that Councilman James Pasch be excluded from your deliberations over this matter due to his own involvement in engineering the unlawful prosecution at issue, as is made clear by public records recently produced by the City disproving Pasch's repeated claims that he "has not been involved in the criminal proceedings against Mr. Burkons," and that he was "unaware of the hiring of Scalise" until she charged Burkons.

The truth, as shown by phone, text, and email records produced by the City, is that Pasch—who claims that prior to June 6 he had "never heard from or about" Alix Nouredinne, the recipient of Burkons' allegedly 'criminal' email—had seventeen phone calls with Nouredinne between June 9 and September 16, in addition to one-hundred twenty-three (123) calls with Law Department officials over the same time period, as well as a ten-minute conversation with Scalise on September 16, nine days before Burkons was charged on September 25.

These records (enclosed for your reference as **Exhibits B-G**) also show that Pasch had a total of seven calls with Nouredinne on Aug. 16, 19, and 22, and eight calls with Law Department officials over the same seven-day span. This started with a voicemail exchange between Pasch and Nouredinne on the morning of August 16, then a four-minute conversation between Pasch and Calta, and a 15-minute conversation between Pasch and Nouredinne later that evening. Pasch and Calta spoke again the next evening for 5 minutes, and then at least three times on August 18 for a total of 23 minutes, with Supler having also spoken with Calta for 9 minutes, and Nouredinne for 45 minutes on the same day. On the following day, August 19, Pasch exchanged two voicemails with Nouredinne, and had a five-minute conversation with him. Then, on August 21, Pasch exchanged a voicemail with Supler and had a 16-minute phone call with her. The next day, Saturday Aug. 22, Nouredinne spoke twice with Pasch, and then emailed Supler the following Monday morning, Aug. 24, stating that he "look[s] forward to speaking with [Supler] or a special prosecutor about this matter and pursuing it as swiftly as possible." Later on the morning of Aug. 24, Supler wrote back to Nouredinne to inform him that "[she's] in the process of finding a special prosecutor" to review the matter, and that afternoon Supler and Pasch had an 8-minute phone call, undoubtedly to discuss the same. The next day, August 25, Supler spoke with Nouredinne for 45 minutes, and the following day, Aug. 26, Supler wrote to Nouredinne confirming that Scalise would be "reviewing the matter." Supler then filed her unauthorized "motion to appoint" Scalise as "special prosecutor" in the Shaker Heights Municipal Court on September 14, two days before Pasch's ten-minute phone call with Scalise on Sept. 16. And in addition to sixteen other calls he had with Law Department personnel between August 25 and September 16, Pasch also spoke with Nouredinne on September 8 and September 16, well after Nouredinne was informed of Scalise's involvement as "special prosecutor," and well before Scalise filed charges against Burkons.

Whether or not you have had anything close to 123 phone calls with the Law Department over this or any three-month period in discharging your duties as an elected Beachwood official, I trust you agree that Pasch's apparent involvement in these proceedings, as reflected by these records, requires his disqualification from your deliberations even apart from his patently untruthful efforts to disclaim any such involvement. I further hope you agree that these records underscore the urgency of the need for you to fix this mess that your admittedly conflicted Law Department officials have

conspired with Pasch to create.

In any event, we have waited more than a month for the City's compliance since having first submitted our demand to Ms. Calta, and cannot wait much longer. If you do not fulfill your respective duties to ensure the termination of Ms. Scalise's unlawful representation of the City by next Monday, December 7, Burkons will proceed in court to ensure the City's compliance with the Charter and Code provisions discussed above, as is his right under R.C. 733.59.

Thank you for your immediate attention to this matter and please feel free to contact me with any questions or concerns about it.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Pattakos", with a horizontal line extending to the right.

Peter Pattakos

Encl. (by email only)

Cc: Mike Burkons
Diane Calta
Kenneth Fisher



Rachel Hazelet <rhazelet@pattakoslaw.com>

Taxpayer demand under R.C. 733.56–59 to enjoin “special prosecutor” Stephanie Scalise’s unauthorized representation of the City of Beachwood

Peter Pattakos <peter@pattakoslaw.com>

Fri, Dec 4, 2020 at 7:36 AM

To: mayor@beachwoodohio.com, barbara.janovitz@beachwoodohio.com, justin.berns@beachwoodohio.com, alec.isaacson@beachwoodohio.com, eric.synenberg@beachwoodohio.com, june.taylor@beachwoodohio.com, Diane Calta <diane.calta@beachwoodohio.com>

Cc: Mike Burkons <mike.burkons@beachwoodohio.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>, Kenneth Fisher <kfisher@fisher-lpa.com>

Good morning Mr. Mayor, Council members, and Ms. Calta,

Based on the lack of response to date, it seems that none of you intend to take action to correct Ms. Scalise's unauthorized representation of the City as requested, so while this follow-up request may be futile, for the record Mr. Burkons must also demand — for the same reasons set forth in my previous correspondence — that you fulfill your legal duty to terminate Mr. Fisher's similarly unauthorized representation of the City as well, as reflected by his letter to me of Nov. 2, which is attached here for your review along with my response to him of the same day.

I must emphasize for the last time that the Charter and Code clearly require a Council ordinance to pass for the City to retain an attorney to represent it. Those provisions are there for good reason and need to be followed. I don't understand how any of you could legitimately take a position to the contrary and Mr. Fisher's Nov. 2 letter doesn't begin to justify it. Nor does Mr. Pasch's self-serving and nonsensical statement to the CJN this week suggesting that you would be “politically interfer[ing] with the special prosecutor” by complying with the Charter and Code's requirements. Of course **Stephanie Scalise has no power or authority over you or any Beachwood citizen that is not expressly granted by a Beachwood ordinance or statute, and it is not “political interference” to terminate a prosecutor who is purporting to represent a City that she was never lawfully appointed to represent, it is simply upholding the law and protecting the citizens of your City by ensuring that the lawyers who represent your City remain accountable to them and you as the City's elected representatives.** This of course also explains why it is similarly nonsensical for Fisher, Pasch, and Calta to have claimed that Judge Montgomery's “appointment” of Scalise—which, please recall, was only made after Supler represented to the Court that Scalise had already been “engaged” by the City—somehow excuses the need for Council to approve the engagement before an attorney can represent the City. By endorsing this notion—that a judge who is not an official for the City of Beachwood, somehow has the power to override the representatives elected by Beachwood citizens to control its government, including to decide which attorneys represent the City in Court, and allow that judge to select attorneys to represent that City without Council's approval of the same, despite the absence of any emergency need for such an appointment—you would again be ceding your own authority and responsibility to Beachwood's citizens to exercise control and supervision over the same (not to mention violating fundamental principles of separation of powers between the legislative, executive, and judicial branches of government). Judge Montgomery has not even claimed she has this power to override your authority to appoint and supervise the City's attorneys in this way, and surely would not, as, again, when she “approved” Scalise's appointment, it was only upon Supler's representation that the City had already “engaged” Scalise, and the Judge had every reason to assume that this “engagement” was made lawfully (i.e., pursuant to a Council ordinance as required).

In sum I am asking you one last time to please fulfill your most basic responsibilities to Beachwood citizens and under the Charter and Code by exercising control over the appointment and supervision of the attorneys who represent your City, including Ms. Scalise and Mr. Fisher here.

I understand there is a Council meeting on Monday so we will wait until Tuesday to file suit, and will proceed on that day absent some credible indication that the City intends to come into compliance, and if it remains necessary for us to file our lawsuit, we will also seek an order to terminate Mr. Fisher's unauthorized representation as well. In the meantime there is plenty of time for you to go into executive session and otherwise take the necessary actions to fix this mess.

Thank you and as always do not hesitate to contact me with any questions or concerns, or to otherwise notify me of your intentions so that we may avoid any unnecessary court filings.

Peter Pattakos
The Pattakos Law Firm LLC
10101 North Road
Fairlawn, OH 44333

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EXHIBIT F

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.

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2 attachments



2020-11-02 letter from Ken Fisher.pdf
195K



2020-11-02 Pattakos response to Fisher letter.pdf
179K

CHARTER

OF THE CITY OF BEACHWOOD, OHIO

EDITOR'S NOTE: The Beachwood Charter was originally adopted by the electors at the general election of November 3, 1959. It was extensively revised and re-adopted in its entirety at the general election of November 6, 2018.

ARTICLE I. POWERS

ARTICLE II. NOMINATIONS, ELECTIONS, QUALIFICATIONS AND REMOVAL OF OFFICERS

- Sec. 1. Municipal Elections.
- Sec. 2. Nominations and Elections.
- Sec. 3. Qualifications of Officers.
- Sec. 4. Oath or Affirmation.
- Sec. 5. Removal of Officers.

ARTICLE III. COUNCIL

- Sec. 1. Powers, Number and Term.
- Sec. 2. Organization.
- Sec. 3. Vacancy.
- Sec. 4. Clerk.
- Sec. 5. Procedure.
- Sec. 6. Ordinances and Resolutions.
- Sec. 7. Voting; Effect of Vacancy in Office.
- Sec. 8. Mayor's Veto.
- Sec. 9. Veto Override.

ARTICLE IV. THE MAYOR

- Sec. 1. Executive and Administrative Powers.
- Sec. 2. Term.
- Sec. 3. Vacancy.
- Sec. 4. General Powers and Duties.
- Sec. 5. Mayor's Estimate of Revenues and Expenditures.

ARTICLE V. ADMINISTRATIVE OFFICERS AND DEPARTMENTS

- Sec. 1. General Provisions.
- Sec. 2. Department of Law.
- Sec. 3. Department of Finance.
- Sec. 4. Department of Audit.
- Sec. 5. Department of Public Safety.
- Sec. 6. Department of Public Works.
- Sec. 7. Department of Building.
- Sec. 8. Department of Community Services.

ARTICLE VI. COMMISSIONS AND BOARDS

- Sec. 1. General Provisions.
- Sec. 2. Planning and Zoning Commission.
- Sec. 3. Civil Service Commission.
- Sec. 4. Removals.

ARTICLE VII. INITIATIVE, REFERENDUM AND RECALL

- Sec. 1. Initiative.
- Sec. 2. Referendum.
- Sec. 3. Recall.
- Sec. 4. Petitions.

ARTICLE VIII. MISCELLANEOUS PROVISIONS

- Sec. 1. Contracts and Fiscal Matters.
- Sec. 2. Public Utilities and Franchises.
- Sec. 3. Salaries and Bonds.
- Sec. 4. Pension and Relief Funds.
- Sec. 5. Limitation on the Rate of Taxation.
- Sec. 6. Effect of Limitation.
- Sec. 7. Amendments.
- Sec. 8. Saving Clause.
- Sec. 9. Effect of Charter Upon Existing Laws.

CHARTER

OF THE

CITY OF BEACHWOOD, OHIO ARTICLE I

POWERS

The City of Beachwood, hereinafter sometimes referred to as the City, is a municipal corporation of the State of Ohio.

The City of Beachwood shall have all powers, general or special, governmental or proprietary, including, without limitation, all powers of local self-government and municipal home rule which may now or hereafter lawfully be possessed or exercised by any city under the Constitution and laws of the State of Ohio or the Constitution and laws of the United States. No enumeration herein of specific powers shall be held to be exclusive. No law of the State of Ohio or of the United States shall be imposed upon the City except where mandated by law, unless the City adopts or approves such State or Federal law by this Charter or by legislative act.

EXHIBIT G

This Charter and City Ordinances, rules and regulations shall be construed broadly in favor of the home rule power of the City where possible.

The powers of the City shall be exercised in the manner prescribed in this Charter or, where not prescribed herein, in such manner as Council may prescribe.

None of the powers herein shall be withdrawn from the exclusive control of the City, nor shall the corporate existence of the City terminate or merge, nor shall any territory be detached from or annexed to the City, without the approval of Council and a majority of the electors of the City voting upon such proposition, as permitted by the general law of Ohio.

ARTICLE II

NOMINATIONS, ELECTIONS, QUALIFICATIONS

AND REMOVAL OF OFFICERS

Sec. 1. Municipal Elections.

Regular Municipal Elections shall be held on the first Tuesday after the first Monday in November of odd-numbered years. Such other elections shall be held as may be required by law or provided for by this Charter.

Sec. 2. Nominations and Elections.

Nominations for elected officers shall be made only by petition, signed by electors of not less than three percent (3%) of the number of persons voting at the last Regular Municipal Election in the City and accompanied by the written acceptance of the nominee. The Clerk of Council shall obtain a certified document from the Board of Elections stating the number of persons so voting and make it available to the public. The nomination of each candidate shall be made by separate petition and filed with the Board of Elections not later than 4:00 p.m. on the ninetieth (90th) day prior to the date of election. No primary election shall be held for the selection of candidates for any elected office of the City. The ballot used for the election of officers of the City shall be without party designation. The names of all candidates for office shall be placed upon the same ballot and shall be rotated in the manner provided by the general law of Ohio. Except as provided in this Charter, the general law of Ohio shall govern the nomination and election of the elected officers of the City.

Sec. 3. Qualifications of Officers.

1. Residency Requirement.

Each elected officer, and each person appointed to fill a vacancy in an elected office, shall have been an elector of the City and resided continuously therein not less than one (1) year immediately preceding the officer's election or appointment and shall continue to reside therein during the term of office.

2. Other Public Office.

Elected officers and persons appointed to fill an elected office shall hold no other elected public office during their terms nor any public employment incompatible to the office held, except for election to an office of a political party or as a member, officer or trustee of a governmental board or commission, council of governments, or publicly supported non-profit institution and that of Notary Public or member of the state militia or Reserve Corps of the United States. Council shall, by a two-thirds vote, determine whether any other public employment is incompatible with an elected office in the City, and its decision shall be final.

3. Financial Interest.

No officer of the City, elected or otherwise, shall knowingly and willfully, either directly or indirectly solicit or have a financial interest in any City contract or the expenditure of money by the City, except for such compensation, interest and benefits as are approved by Council, nor shall any officer of the City take possession of property owned by the City except for the prompt delivery of such property to the City. Any violation shall disqualify such person from holding office or employment with the City for such time as Council shall determine, in addition to other disciplinary actions or penalties provided by law. Council may adopt additional laws to provide for the ethical conduct of elected and appointed officers and employees of the City and to protect the financial integrity of the City.

Sec. 4. Oath or Affirmation.

Every officer of the City shall, before assuming the duties of office, take and subscribe to an oath or affirmation to support the Constitution and laws of the United States, the Constitution and laws of the State of Ohio and the Charter and laws of the City of Beachwood, and to faithfully, honestly and impartially discharge the duties of the office.

Sec. 5. Removal of Officers.

Council may remove any elected officer of the City for failure to possess or continue to possess any qualification of office established by this Charter, for a violation of the officer's oath of office, or for the conviction, while in office, of a felony. Council shall give an elected officer a written copy of the charges and an opportunity to be heard, with at least fifteen (15) days prior notice of the time and place of hearing. The removal of an elected officer shall require a two-thirds vote of Council.

Absence of a Councilmember from four (4) consecutive Regular Council meetings of Council, or a total of eight (8) Regular Council meetings in a calendar year, without such absence being authorized or approved by an affirmative vote of Council, shall operate to vacate such office forthwith and without further proceedings. (Amended 11-2-99)

ARTICLE III

COUNCIL

Sec. 1. Powers, Number and Term.

1. Powers and Number.

The legislative power of the City shall be vested in a Council of seven (7) members, elected at-large, who shall have all powers and duties as enumerated or limited in this Charter.

2. Term.

Councilmembers shall be elected at the Regular Municipal Election for a term of four (4) years to serve staggered terms commencing on the first day of January after such election, and shall serve until their successors are elected and qualified. Four (4) members of Council shall be elected at the Regular Municipal Election in 1995 and three (3) members shall be elected at the Regular Municipal Election in 1997.

Sec. 2. Organization.

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The Council shall meet in January following the election of Councilmembers, or as soon thereafter as is practicable, Council shall meet in the Council Chamber and organize. At such organizational meeting, or as soon thereafter as is practicable, Council shall

elect one (1) of its members to be the Council President, for a term not beyond the next organizational meeting, and Councilmembers of all Boards and Commissions required by this Charter or by Ordinance, each to serve not beyond the next organizational meeting, unless the Councilmember shall cease in the meantime to be a member of Council. The Council President shall appoint chairpersons and members of standing and temporary committees of Council to serve terms not beyond the next organizational meeting. In case of a vacancy, the Council President shall be elected by Council from among its members, and shall serve for the unexpired term of such President.

At the organizational meeting, Council shall also elect a Council Vice President who, in the event the Council President is for any reason unable to perform the duties of Council President, shall act in the place of the Council President.

In the event of the Mayor's temporary absence or inability to perform the duties of the office of Mayor at a time during which the Council President is for any reason unable to perform the duties of Council President, the Council Vice President shall become acting Mayor in the same manner as the Council President under Article IV, Section 3 of the Charter for such period.

Council, by a two-thirds vote, may remove any Councilmember from a Board or Commission. No Councilmember shall be so removed without at least fifteen (15) days prior notice of the meeting at which such removal is proposed.

Sec. 3. Vacancy.

Any vacancy in Council shall be filled by appointment by majority vote of the remaining members of Council within forty-five (45) days of such vacancy. The Council President shall report the notice of vacancy at the next Regular Council meeting after the Council President has learned that such vacancy will occur. If such vacancy is not filled within forty-five (45) days, the Mayor shall fill it by appointment. Such appointee shall hold office for the unexpired term of the member whose office is filled and shall have all the rights, powers and duties of elected Councilmembers. If the office of Council President, Vice President, or a Councilmember appointed to of a Board or Commission becomes vacant, it shall be promptly filled.

Sec. 4. Clerk.

Council shall appoint a Clerk who shall be the Clerk of Council and Secretary of the Planning and Zoning Commission, Civil Service Commission and of all Boards and Commissions established by Council. The Clerk shall keep the records of Council and of the Boards and Commissions of which the Clerk is Secretary. The Clerk shall authenticate all records, documents and instruments of the City required by law and perform other duties required by Council. Council may also appoint Assistant Clerks of Council to assist the Clerk and to act in the Clerk's absence.

Sec. 5. Procedure.

1. Council President to Preside at Council Meetings.

The Council President shall preside over all Regular and Special Council meetings and meetings of the Committee of the Whole.

2. Quorum.

A majority of the members of Council shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time and compel the attendance of absent members.

3. Council Duties.

Council shall, by Ordinance, Resolution or, when appropriate, by Motion, make provision for:

(A) The time and place of Regular and Special Council meetings, providing for at least two (2) regular Council meetings in each calendar month, except that Council may provide for only one (1) Regular Council meeting per month during the months of June, July and August, when a quorum will not be present or when Council has no agenda.

(B) The form and method of enacting Ordinances and Resolutions. Ordinances shall not contain more than one (1) subject or related subjects, which shall be clearly stated in the title, except for general appropriation Ordinances.

(C) The manner of giving any public notice of the enactment of legislation and other City proceedings which it deems proper to publish, and the printing, publishing and distribution of information of general interest at the expense of the City, as Council shall determine, provided that such information shall not express an opinion or promote any person, position or group of persons or any idea, theory or viewpoint of a political nature.

(D) The procedure for making public improvements, for levying assessments, provided that two (2) or more public improvements, including the levying of assessments therefor, may be combined in one (1) proceeding if Council finds that it will be economical and practical to undertake said improvements jointly; and the procedure for the reduction of unpaid installments and the return of paid installments of assessments levied in larger amounts than necessary to pay for public improvements.

(E) The advertising and awarding of contracts.

(F) The appointment or employment of:

(1) An Auditor, a Law Director, Assistant Law Directors and other Attorneys at Law under contract with the City.

(2) Consultants to advise and assist the Mayor, Council or any Board, Commission, Committee or Department of the City regarding City issues.

(G) The enforcement of attendance by Councilmembers, Directors, and City employees at its meetings; the removal of members of Boards and Commissions who either fail to attend Regular or Special meetings of the Board or Commission on which the member is serving or for other just cause; and the removal of Directors and Chiefs for just cause.

The removal of members of Boards and Commissions or of Directors and Chiefs shall require not less than fifteen (15) days written notice of the Regular or Special Council meeting where such removal is proposed and an opportunity for the member or Director to be heard at such meeting. An order of removal shall require a three-fourths vote of Council for passage and is not subject to veto by the Mayor.

(H) The requirement that the Directors and City employees attend all Council meetings, when requested to attend by Council, and participate in all discussions relating to their respective Departments.

(I) Such legislation, rules and/or regulations, or other acts as Council shall require to implement the Charter or any requirement of

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(J) The manner of keeping a record of Council's proceedings and the establishment of rules, regulations and voting

requirements of Council and each of the Boards and Commissions created by Charter or by Council, other than the Civil Service Commission, unless otherwise provided in this Charter.

Sec. 6. Ordinances and Resolutions.

1. Readings.

All Ordinances and Resolutions, sometimes referred to as legislation, shall be read in full or by title only on three (3) separate days, unless Council, by a vote of not less than two-thirds of its members, suspends this rule and provides for a lesser or greater number of days.

2. Final Passage.

The final passage date of all Ordinances and Resolutions shall be on (1) the date the legislation is approved by the Mayor; (2) the date of the override of a Mayor's veto by Council, if disapproved; or (3) the last date the Mayor was eligible to sign the Ordinance or Resolution if the Mayor neither approves nor disapproves it.

3. Effective Date.

Ordinances (1) for the appropriation of money, (2) for providing for tax levies or (3) for improvements petitioned for by a majority of the owners of the property to be assessed, and (4) emergency or urgent measures declared by Council to be necessary for the immediate preservation of the public peace, health or safety or the efficient operation of the City, shall go into immediate effect, provided, however, that in the case of emergency or urgent measures, the reasons for the emergency or urgency shall be set forth in one section of the Ordinance or Resolution, and such emergency or urgent measures shall require a vote of at least two-thirds of the members of Council for passage. No other Ordinance or Resolution shall go into effect until thirty (30) days after its final passage.

4. Emergency or Urgent Legislation Not Permitted.

No legislation authorizing or providing for any (1) change in the zoning of any land or zoning regulations, (2) change in the boundaries of the City, (3) the surrender or joint exercise of any of its powers, (4) the granting of any franchise or (5) the compensation for elected officials, shall be passed as an emergency or urgent measure.

Sec. 7. Voting; Effect of Vacancy in Office.

1. Voting.

(A) All voting of Council whether after a reading or final vote shall be taken by roll call, the Clerk calling the names of each of the members in alphabetical order and recording the vote in the minutes of the meeting. A majority of the members of Council shall vote "yes" to pass any Ordinance, Resolution or Motion, at a first or second reading or to adopt the issue on the third or final reading unless a greater number is required or a lesser number is permitted by this Charter.

(B) All votes shall be recorded as "yes" or "no". A vote to "abstain" shall be counted as voting with the majority of those who do vote. A member who does not vote due to a conflict of interest shall not participate in discussion or vote on the issue and shall not sit with Council during the proceedings relating to that issue.

2. Effect of Vacancy in Office.

In the event of one (1) or more vacancies on Council, the quorum shall be reduced to a majority of the remaining Councilmembers. The number of Councilmembers required to pass any Motion or legislation shall be the percentage of the voting requirement applied to the remaining Councilmembers.

3. Effect of Conflict of Interest.

In the event a member of Council declares an inability to vote due to a conflict of interest, the member shall make a full explanation of such conflict, which shall be recorded in the minutes of the meeting. The requirements for a quorum and other voting on that issue shall be the same as if the office were vacant.

Sec. 8. Mayor's Veto.

1. Every Ordinance or Resolution of Council shall be signed by the Clerk, an Assistant Clerk in the absence of the Clerk or two (2) members of Council, and presented to the Mayor forthwith for consideration noting the date of delivery to the Mayor.

2. If the Mayor approves the legislation, the Mayor shall sign it and file it with the Clerk within seven (7) days of its passage by Council. The Mayor may approve or disapprove the whole or any item of Ordinance appropriating money, but otherwise such approval or disapproval shall be addressed to the entire Ordinance or Resolution.

3. If the Mayor disapproves the legislation, or any item of it where permitted, the Mayor shall file a written notice of the disapproval with the Clerk noting the date of delivery to the Clerk. Unless written notice of disapproval is filed with the Clerk within seven (7) days after passage by Council, it shall take effect as though the Mayor had signed it.

Sec. 9. Veto Override.

When the Mayor has disapproved an Ordinance or Resolution or item of it as herein provided, Council may reconsider and override the Mayor's disapproval within thirty (30) days after the Mayor files the notice of disapproval with the Clerk. If upon such reconsideration the Ordinance, Resolution or item is passed by two-thirds of the members of Council, it shall then take effect notwithstanding the disapproval of the Mayor. If the Ordinance, Resolution or item is amended on such reconsideration, it shall again be presented to the Mayor as provided in Article III, Section 8.

ARTICLE IV

THE MAYOR

Sec. 1. Executive and Administrative Powers.

The executive and administrative powers of the City shall be vested in the Mayor, and, under the Mayor's direction, in the Directors and other administrative officers provided for in this Charter at Article V or by Ordinance.

Sec. 2. Term.

The Mayor shall be elected at the Regular Municipal Election in November of 1997 and every fourth year thereafter for a term of four (4) years, commencing on the first day of January next after such election, and shall serve until a successor is elected and qualified.

Sec. 3. Vacancy.

1. In the event of the Mayor's temporary absence or inability for any cause to perform the duties of the office, the Council President, or if necessary, the Council Vice President, shall become the acting Mayor and have all of the powers and duties of the Mayor for such period, but not the power of veto, and shall continue to have all the powers and duties of the Council President or Council Vice President until the Mayor is elected or qualified.

2. In the event of the Mayor's death, resignation, removal or disqualification, the unexpired terms shall be filled as follows:

- (A) The Council President shall immediately become acting Mayor, with the same power and duties as provided in Article IV of this Charter to serve as follows:
- 1) If twenty-four (24) months or more remain of the Mayor's term, then the Council President shall serve as acting Mayor until a new Mayor is elected at a special election to be held within one hundred (100) days after the vacancy occurs. The petition filing deadline for each candidate shall be sixty (60) days prior to the election. During such tenure, the acting Mayor is permitted to conduct the business of the City on a part-time basis in order to maintain any prior or current full-time employment.
 - 2) If less than twenty-four (24) months remain of the Mayor's term, then the Council President shall become Mayor if the Council President accepts the office within fifteen (15) days after the vacancy occurs at a Regular or Special Council meeting or in writing to Council. During such tenure, the Council President who becomes Mayor shall use their best efforts to conduct the business of the City on a full-time basis.
 - 3) If within said fifteen (15) days the Council President declines the office of Mayor at a Regular or Special Council meeting of Council or in writing to Council, then the Council President shall continue as acting Mayor. If the Council President declines the office of the Mayor, the Council Vice President shall become Mayor if the Council Vice President accepts the office within fifteen (15) days after the Council President declines the office, at a Regular or Special Council meeting or in writing to Council. If within said fifteen (15) days the Council Vice President declines the office of Mayor at a Regular or Special Council meeting or in writing to Council, then the Council President shall continue as acting Mayor until Council meets and elects one of its members to be Mayor. Such election shall occur within fifteen (15) days of the receipt of notice that the Council President declines the Mayor's office. No Councilmember shall be so elected without the Councilmember's consent.
 - 4) The acting Mayor shall have no veto power during any tenure served under subsection 1 or 3, hereof.
- (B) If the Council President accepts the office of Mayor, then (1) the Council President's office as Councilmember and as Council President shall be vacant and filled in accordance with this Charter and (2) the Council President shall become Mayor with all the powers and duties as provided in Article IV.

Sec. 4. General Powers and Duties.

1. Judicial Powers.

The Mayor may establish a Mayor's Court and shall have all the judicial powers granted by the general law of Ohio to mayors of cities, including the ability to appoint a Magistrate to carry out the Mayor's judicial powers.

2. Legislative Powers.

The Mayor shall have the right to attend all meetings of Council, sit at the Council table, introduce legislation at Regular Council meetings and take part in discussions of Council, and shall have the power of veto as provided in Article III, Section 8, of this Charter. The Mayor shall require Directors or other City Employees to attend Council meetings and provide advice and opinions as may be requested by the Mayor or Council.

3. Executive Powers and Duties.

The Mayor shall be the Chief Executive Officer of the City and shall execute, on behalf of the City, all contracts, conveyances, evidences of indebtedness and other instruments to which the City is a party, and be recognized as the official and ceremonial head of the City government.

4. Administrative and Enforcement Powers.

The Mayor shall supervise the administration of the City's affairs, exercise control over all Departments and Divisions, except those reserved to Council, and shall be the chief conservator of the peace within the City. The Mayor shall require that all laws, Ordinances, Resolutions, and Regulations are enforced. The Mayor may act as the head of the Department of Public Safety. The Mayor's Office shall be at City Hall or other appropriate City Facility and, subject to a reasonable transition period for a newly seated Mayor, the Mayor shall conduct the business of the City on a full-time basis.

5. Financial Duties.

The Mayor shall be responsible for the preparation and submission to Council of the annual estimate of receipts and expenditures and appropriation measures and shall, at all times, keep Council fully advised as to the financial condition and needs of the City. The Mayor shall recommend to Council such measures as the Mayor deems necessary or expedient.

6. Require Contracts to be Enforced.

The Mayor shall require that all terms and conditions imposed in favor of the City or its residents in any franchise or contract to which the City is a party are faithfully enforced and performed.

7. Mayoral Appointments.

The Mayor shall appoint (1) the Directors, except those reserved to Council by this Charter, to serve at the Mayor's pleasure, but not to exceed the expiration of the Mayor's term of office, (2) the chairpersons and all members of all Boards and Commissions except those reserved to Council by this Charter, and (3) the Mayor's Court Magistrate.

8. Council Confirmation of Mayoral Appointments.

All Mayoral appointments, as provided for in Article IV, Section 4(7) of this Charter, except the Mayor's Court Magistrate, shall be confirmed by Council before they become effective. Unless two-thirds of Council votes not to confirm the Mayor's proposed appointment within thirty (30) days after it receives notice of such proposed appointment, the appointment shall be confirmed. Council's right not to confirm shall not otherwise be limited.

9. Mayoral Appointments Not Subject to Confirmation.

The Mayor shall appoint all officers and employees of the City, in addition to those referred to in Article IV, Section 4(7), except those reserved to Council. Such appointments shall not require confirmation of Council.

All persons appointed by the Mayor, may be promoted, transferred, reduced or removed by the Mayor in accordance with this Charter or Ordinance of the City.

Sec. 5. Mayor's Estimate of Revenues and Expenditures.

The fiscal year of the City shall begin on the first day of January. On or before the fifteenth day of July of the current fiscal year, the Mayor, with the assistance of the Finance Director, shall prepare and submit to Council an estimate of the revenues and expenditures of all Departments for the ensuing year. Council may require additional fiscal information from the Mayor or the Finance Director.

The classification of the estimate of expenditures shall be uniform for the main functional divisions of all Departments and shall provide the following information:

1. An estimate of the anticipated revenue from each source during the next fiscal year, with comparative statements of the amount received from such source during the preceding year and the current year plus an estimate of such amounts for the remainder of the current year.
2. A detailed estimate of the expense of conducting each Department and activity of the City for the next fiscal year, together with comparative statements as provided in the preceding paragraph, with reasons for proposed increases or decreases as compared with the current fiscal year.
3. The amount of the total and net debt of the City together with a schedule of maturities of outstanding bonds and notes.
4. A statement of the unencumbered balance in each bond and improvement fund.

ARTICLE V

ADMINISTRATIVE OFFICERS

AND DEPARTMENTS

Sec. 1. General Provisions.

Departments of Law, Finance, Audit, Public Safety, Public Works, Building and Community Services are established. Council may combine or abolish Departments and Divisions, and may authorize one (1) person to be head of two (2) or more Departments or Divisions, except that Council shall not combine or abolish the Departments or Directors of Law, Finance or Audit. Council may, by Ordinance, establish new Departments or Divisions.

Sec. 2. Department of Law.

1. Appointment.

The Department of Law shall be headed by a Law Director who shall be appointed and supervised by Council for a term not beyond the next organizational meeting of Council. Council may also provide for Assistant Law Directors and special legal counsel.

2. Qualifications.

The Law Director shall be duly admitted to the practice of law in the State of Ohio and shall have had at least seven (7) years of experience in the active practice of law, including a minimum of five (5) years full-time and/or substantial part-time experience in the practice of municipal and/or governmental law.

3. Duties.

The Law Director shall serve the Mayor, the various Departments, Boards, Commissions and officers of the City and the Council, as attorney and legal counsel, and shall represent the City in all proceedings in court or before any administrative body. The Law Director shall be general legal counsel to the City, its elected and appointed officers, and all Boards, Commissions and employees of the City, in their official capacity. 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. The Law Director shall perform all duties required by this Charter, the Mayor and Council and all other duties now or hereafter imposed by law upon legal counsel for cities unless otherwise provided by Ordinance by Council.

Sec. 3. Department of Finance.

1. Finance Director.

The Department of Finance shall be headed by the Finance Director.

2. Qualifications.

The Finance Director shall be a graduate of an accredited college or university. In addition, the Finance Director must possess an active Ohio License as a certified public accountant and at least five (5) years of full-time and/or substantial part-time professional experience in municipal government accounting and finance.

3. Duties.

The Finance Director shall keep accurate financial records and accounts of the City, including all taxes and assessments, all monies due to and all receipts and disbursements by the City, all the assets and liabilities of the City and all appropriations made by Council. The Finance Director shall examine payrolls, bills and other claims; approve, if proper; and if appropriations therefor have been duly made, prepare and approve all payments. The Finance Director shall assist the Mayor and Council in the preparation of estimates, budgets and appropriations, and shall perform all other duties required by this Charter or by Ordinance. The Finance Director shall be the Treasurer of the City and shall be the custodian of all monies of the City.

Sec. 4. Department of Audit.

1. Appointment.

The Department of Audit shall be headed by the Auditor, who shall be appointed and supervised by Council for a term not beyond the next organizational meeting of Council.

2. Qualifications.

The Auditor shall be a Certified Public Accountant with at least seven (7) years of experience in auditing or financial accounting including two (2) years of experience in governmental finance and accounting.

3. Duties.

The Auditor shall make an audit of the books and all records of the Finance Department. The Auditor shall make reports to the Mayor and Council annually and when requested, and shall approve all financial reports and statements of the Finance Department. The Auditor shall perform any other duty required by this Charter, or by Ordinance or Resolution of Council.

Sec. 5. Department of Public Safety.

The Department of Public Safety shall be headed by the Safety Director. The Safety Director shall administer the Department of Police and the Department of Fire and Rescue.

Sec. 6. Department of Public Works.

The Department of Public Works shall be headed by the Public Works Director. The Public Works Director shall supervise street and utility maintenance, maintenance of public properties and service collections.

Sec. 7. Department of Building.

The Department of Building shall be headed by the Building Commissioner who shall administer and enforce all building and zoning codes. The Building Commissioner shall be subject to the requirements of the Ohio Board of Building Standards and the Ohio Administrative Code in order to be the certified building official, residential plans examiner, building inspector, and either electrical safety inspector or commercial plumbing inspector, or any other applicable requirement that may be implemented by the State.

Sec. 8. Department of Community Services.

The Department of Community Services shall be administered by the Community Services Director who shall administer all Human Services and recreation regulations and programs.

ARTICLE VI

COMMISSIONS AND BOARDS

Sec. 1. General Provisions.

A Planning and Zoning Commission and Civil Service Commission are established by this Charter. Council may establish other Commissions or Boards for any proper City purpose. A member of any Commission or Board is an officer of the City. Any vacancy on a Commission or Board shall be promptly filled according to this Charter.

Sec. 2. Planning and Zoning Commission.

1. Composition.

The Planning and Zoning Commission shall consist of seven (7) members as follows:

- (A) The Mayor.
- (B) One (1) Councilmember, to be appointed by Council.
- (C) Four (4) residents of the City appointed by the Mayor with one (1) from each of the three (3) districts established by Council pursuant to Section 3 below and one (1) resident appointed at-large.
- (D) One (1) resident of the City appointed at-large by Council.

2. Terms of Commission Members.

Resident members of the Commission shall serve staggered terms of three (3) years and shall hold no other City office.

The terms of the four (4) members appointed by the Mayor shall commence as follows:

- one (1) district member on January 1, 1995.
- one (1) district member on January 1, 1996.
- one (1) district member on January 1, 1997.
- one (1) at-large member on January 1, 1997.

The term of the one (1) member appointed by Council shall commence as follows: one (1) at-large member on January 1, 1995.

3. Districts.

Council shall maintain three (3) districts, each with approximately an equal number of residents. Recognizing the need to also have a reasonable amount of geographical distribution of resident members, Council may adjust the size and location of such districts in accordance with the most recent decennial U.S. Census Bureau population figures.

4. Powers and Duties.

The Planning and Zoning Commission shall have such powers and duties as this Charter or Council shall provide concerning the plan, design, location, removal, relocation, and alteration of any public buildings or structure or those located on public streets or property; the location, relocation, widening, extension, and vacation of streets, parkways, playgrounds and other public places; the approval of plats for the subdivision of land; the zoning of the City for any lawful purpose and such other powers as are now or may hereafter be conferred upon it by Ordinance of the Council or the general laws of Ohio.

Sec. 3. Civil Service Commission.

1. The Civil Service Commission shall consist of three (3) electors of the City not holding any other City office to be appointed by the Mayor and confirmed by a majority of members of Council to serve staggered terms of six (6) years, with one (1) member's term expiring every two (2) years on January 1, following a Regular Municipal Election. A vacancy occurring during the term of a member of the Civil Service Commission shall be filled for the unexpired term in the same manner as the original appointment was made. The civil service of the City is divided into the unclassified and classified service.

- (A) The unclassified service shall include all elected, appointed and employed persons of the City except those included in the classified service.
- (B) The classified service shall consist of all Police Officers and Fire Fighters who are appointed and/or promoted by competitive civil service examination, excluding the Chief and any Deputy Chief of the Police Department and the Chief and any Deputy Chief of the Fire and Rescue Department, to be known as the safety forces. Council, by Ordinance, shall create each rank in the safety forces and the number of persons to serve in each rank. Such Ordinance shall be known as the table of organization.

2. Appointments and promotions within the classified service of the City shall be determined on the basis of merit and fitness and in the manner provided for cities by the Constitution and the general laws of the State of Ohio, except as otherwise provided in this Charter or City Ordinance. The Civil Service Commission shall adopt rules and regulations implementing the provisions of the general law and as to any matter not controlled by the general law may provide by general rule therefor, except:

- (A) That the Civil Service Commission may by rule establish a probationary period of not more than two (2) years for persons appointed to the Classified Service; and
- (B) The percentage of any other job related training and/or education credit or military service may be established by rule of the Civil Service Commission. Notwithstanding the percentage of each such credit established by rule of the Civil Service Commission, the total additional credit which may be added to any passing grade on an entrance examination shall not exceed ten percent (10%).

3. All rules promulgated by the Civil Service Commission shall be approved by Council. (Amended 11-7-17)

Sec. 4. Removals.

The Mayor may remove any member of a board or commission, except a member appointed by Council. The member recommended to be removed shall be entitled to:

- (1) An administrative hearing before the Mayor with a statement of the Mayor's reasons for removal being presented. Such member shall have an opportunity to respond.
- (2) An appeal to Council, if an appeal is filed in writing with the Clerk of Council within five (5) days of the receipt of the Mayor's order of removal. Council shall hold a public hearing on the appeal within ten (10) days and vote whether or not to affirm the order of removal by the Mayor. A vote of two-thirds of Council is required to overrule the order of removal by the

ARTICLE VII

INITIATIVE, REFERENDUM AND RECALL

Sec. 1. Initiative.

1. The electors of the City shall have power to propose any Ordinance or Resolution, except an Ordinance for the appropriation of money or an Ordinance making a tax levy, and to adopt or reject the same at the polls, such power being known as the initiative, subject to the conditions hereinafter set forth.

2. Prior to the circulation of a petition to initiate an Ordinance or Resolution, the circulators shall register such petition with the Clerk of Council. Such registration shall set forth in full the proposed Ordinance or Resolution and shall also designate a committee of five (5) electors who shall represent all the petitioners in all matters relating to such petition. Notice of all matters required by law to be served on the committee shall be served either personally or by certified mail, or by leaving such notices at the usual place of residence of any member of the committee.

3. Such petition shall be in the form prescribed by Ohio R.C. § 3519.05 and shall be valid only if submitted as hereinafter set forth within ninety (90) days from the date of registration.

4. An initiated Ordinance or Resolution may be submitted to the Clerk of Council by petition signed by at least ten percent (10%) of the votes cast within the City in the most recent Governor's election, as certified by the Board of Elections. When so submitted, the Clerk shall forthwith determine the sufficiency of the petition, and if found sufficient, Council shall have the proposed Ordinance or Resolution read at its next regular Council meeting and referred to an appropriate committee, which may be a Committee of the Whole. Council shall conduct at least one (1) public hearing on the proposed Ordinance or Resolution. Council shall, within sixty (60) days after such Ordinance or Resolution is submitted, take final action thereon, either adopting or rejecting the proposed Ordinance or Resolution. If Council fails or refuses to pass such proposed Ordinance or Resolution, or passes it in some form different from that set forth in the petition therefor, the committee of the petitioners may require that it be submitted to a vote of the electors either in its original form or in the amended form by filing a letter with the Clerk of Council within ten (10) days after Council either rejects the legislation proposed by the initiative or passes it in some form different than requested.

Council shall thereupon provide for submitting such Ordinance or Resolution to the vote of the electors at the next regular election if one occurs in not less than ninety (90) days from the date of receipt of the letter, or at a special election to be held in not more than one hundred twenty (120) days from receipt of the letter. If an Ordinance or Resolution is adopted by the electors, it shall be in full force and effect from the date the election result is officially certified by the Board of Elections, and Council shall not repeal it for at least two (2) years thereafter.

Sec. 2. Referendum.

1. The electors shall have the power to approve or reject at the polls any Ordinance or Resolution passed by Council, except as hereinafter provided.

2. Within thirty (30) days after the final passage date of an Ordinance or Resolution, a petition signed by at least ten percent (10%) of the votes cast within the City in the most recent Governor's election may be filed with the Clerk of Council, requesting that such Ordinance or Resolution either be repealed or submitted to a vote of the electors. When such petition is filed, the Clerk shall first ascertain the sufficiency of the petition, and if found sufficient, Council shall, within thirty (30) days of the filing of such petition, reconsider such Ordinance or Resolution. If upon such reconsideration the Ordinance or Resolution is not repealed, Council shall provide for submitting it to a vote of the electors at the next regular election if one occurs in not less than ninety (90) days from the date Council, upon reconsideration, fails to repeal the Ordinance or Resolution, or at a special election to be held in not more than one hundred twenty (120) days from the date Council, upon reconsideration, fails to repeal the Ordinance or Resolution. No such Ordinance or Resolution shall go into effect until approved by a majority of those voting thereon. When Council is required to pass more than one (1) Ordinance or Resolution necessary to complete a legislative objective, the referendum provision shall apply only to the first Ordinance or Resolution required to be passed and not to any subsequent Ordinance or Resolution relating thereto. Ordinances providing for tax levies or for improvements petitioned for by the owners of a majority of the property to be specially assessed therefor, appropriation Ordinances limited to the subject of appropriations and emergency or urgent Ordinances and Resolutions, shall not be subject to referendum, but all other Ordinances and Resolutions shall be subject to referendum.

3. Ordinances and Resolutions submitted to Council by initiative petition and passed by Council either with or without change, but not required to be submitted to a vote of the electors, shall be subject to referendum in the same manner as other Ordinances and Resolutions.

Sec. 3. Recall.

The electors shall have the power to remove from office by recall any elected officer or a person appointed to fill a vacancy in an elected office. At any time after any elected or appointed officer has held office for six (6) months of the term for which the officer was elected or appointed, a petition demanding such officer's removal from such office may be filed with the Clerk of Council. A copy of such petition shall be filed with the Clerk of Council before circulation and shall be circulated and re-filed with the Clerk within thirty (30) days. Such petition shall comply with the provisions of Section 4 of Article VII and shall be signed by electors equal in number to at least twenty percent (20%) of the total votes cast at the last preceding Regular Municipal Election. If the Clerk shall find the petition sufficient, the Clerk shall promptly so certify to Council and to the officer whose removal is sought, and, if the officer does not resign within five (5) days thereafter, Council shall thereupon order and fix a day for holding a recall election not less than ninety (90) nor more than one hundred and twenty (120) days from the date of the Clerk's certificate of sufficiency. At such recall election, the name of the officer whose removal is sought shall be placed on the ballot substantially in the following form:

Shall () be recalled and removed from the office of () for the term beginning () and ending ()?

Yes

No

Electronically Filed 12/08/2020 14:55 / CA 20 110139 / Confirmation Nbr. 2131749 / CLCEJ
If a majority of those voting to recall and remove such officer vote to remove, such officer is removed effective on the date the result of the election is certified by the Board of Elections to the Clerk of Council. All vacancies created as a result of a recall election shall be

filled as stated in Article III, Section 3 or Article IV, Section 3 of this Charter.

Sec. 4. Petitions.

An initiative, referendum or recall petition may be circulated in separate parts but shall be bound together and filed as one (1) instrument with the Clerk of Council or an Assistant Clerk of Council only. Each part shall contain, in the case of the initiative or referendum, a full and correct copy of the title and text of the proposed or referred Ordinance or Resolution, and in the case of a recall, the name and office of the person whose removal is sought and a statement in not more than two hundred (200) words of the grounds for the removal.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Sec. 1. Contracts and Fiscal Matters.

The general law of Ohio relating to budgets, appropriations, deposits, expenditures, debts, bonds, contracts and other fiscal matters of cities shall be applicable to the City if mandated by the general law of the State of Ohio.

Sec. 2. Public Utilities and Franchises.

1. Public Utilities.

Council may by Ordinance grant permission to any person to construct and operate a public utility on, across, under or above any public street or ground within the City on terms and under regulations conducive to the public interest. However, such grant, and any amendment or renewal thereof shall be subject to applicable laws and regulations established by the state and/or federal governments.

2. Franchises.

Council shall not pass an Ordinance or Resolution making, amending or renewing a franchise as an emergency or urgent measure. If a franchise is for a period of more than one (1) year, Council shall hold a public hearing before final passage. At least two (2) weeks prior to the public hearing, notice of the proposed Ordinance or Resolution shall be published in a newspaper of general circulation in the City and by any other means provided for by Ordinance.

Sec. 3. Salaries and Bonds.

1. Salaries.

(A) Council shall establish, by Ordinance, or amend as necessary, the salary and compensation of the Mayor, Council and all officers and employees of the City.

(B) An Ordinance providing for any compensation received by the Mayor or Council shall be read three (3) times and not be passed as an emergency or urgent legislation.

(C) Council may not amend its compensation later than thirty (30) days before the time for filing nominating petitions for a Council term. Such an amendment shall be effective for all Council persons on January 1, following the next regular Council election, two (2) years thereafter.

2. Bonds.

Council may require any officer or employee to be bonded for the faithful performance of duties.

Sec. 4. Pension and Relief Funds.

Council shall provide for the maintenance of pension, relief and retirement funds required by the general law of the State of Ohio.

Sec. 5. Limitation on the Rate of Taxation.

The aggregate amount of taxes that may be levied by the taxing authority of the City without the vote of the people on any taxable property assessed and listed for taxation according to value for all purposes of the City shall not in any one (1) year exceed nine and two-tenths (9.2) mills for each dollar of assessed valuation.

Within the maximum levy provided for in this Charter, Council shall annually levy an amount sufficient to pay the interest, sinking fund and retirement charges on all notes and bonds of the City heretofore or hereafter lawfully authorized to be issued without the authority of the electors, which levy shall be placed before and in preference to all other levies and for the full amount thereof.

Sec. 6. Effect of Limitation.

The limitation of Article VIII, Section 5, of this Charter upon the power of Council to levy taxes shall not operate as a limitation upon the power of Council to levy taxes upon such other subjects and for such other purposes as may be lawful under the Constitution and laws of this State.

Sec. 7. Amendments.

1. By Council or Petition.

Amendments to this Charter may be submitted to the electors of the City by a two-thirds vote of Council, and shall be submitted by Council when a petition signed by ten percent (10%) of the electors of the City, as of the last Regular Municipal Election prior to the time said petition is submitted, setting forth a proposed amendment, is filed with Council in the manner and form prescribed herein for the submission of Ordinances by an initiative petition. The Ordinance providing for the submission of any such amendment shall be submitted to the electors at the next Regular Municipal Election if one shall occur not less than seventy-five (75) nor more than one hundred and twenty (120) days after its passage by Council or the delivery to Council of a petition. Otherwise, Council shall provide for the submission of the proposed amendment at a special election to be called and held within the time aforesaid.

2. By Charter Review Commission.

(A) Commencing on or about September 1st of 2027 and then eight (8) years thereafter, a Charter Review Commission composed of nine (9) Commissioners who are and continue to be electors of the City, shall be established to review this Charter. Each City Council Member shall be entitled to nominate one (1) Commissioner for appointment by Council, and the Mayor shall appoint two (2) Commissioners. In making appointments, Council and the Mayor shall make a good faith effort to ensure that the Charter Review Commission is reflective of the City in terms of diversity, and that each Commissioner has relevant experience and qualifications. No Commissioner may hold any other office or employment with the City. Members shall serve until the Commission's recommendations have been submitted to Council.

(B) The Charter Review Commission shall, in public meetings, review in a comprehensive and thorough manner the City's Charter. In the calendar year following the establishment of each Charter Review Commission, the Commission shall recommend to Council and the Mayor such amendments, including alterations, additions, or deletions, if any, to the Charter. The Charter Review Commission shall invite and consider proposed amendments and revisions from the City Administration, Council and Residents. In

presenting its recommendations, the Commission shall reserve sufficient time for Council and the public to review the proposed amendments and for Council to make appropriate alterations, additions, or deletions prior to formal Council action on them. Any proposed amendment that Council approves by a two-thirds vote shall be timely submitted to the County Board of Elections for presentation to the electors of the City at the November General Election of 2028, and then each eight (8) years thereafter, in a manner otherwise in accordance with the provisions of this Charter and the Constitution of Ohio.

3. Citizen Notification.

Not less than thirty (30) days prior to such election the Clerk of Council shall mail a copy of the proposed amendment to each elector whose name is made known to the Clerk from the registration books of the Board of Elections and to such other households as Council shall require. If such proposed amendment is approved by a majority of the electors voting thereon, it shall become a part of this Charter.

Sec. 8. Saving Clause.

The determination that any part of this Charter is invalid shall not invalidate nor impair the force or effect of any other part hereof, except to the extent that such other part is dependent for its operation upon the part declared invalid. Should Council find that it acted in any manner in violation of this Charter or the laws of the City, it is authorized to make necessary corrections by further legislation to correct such error or omission.

Sec. 9. Effect of Charter Upon Existing Laws.

This Charter shall not affect any pre-existing rights of the City, nor any right or liability or pending suit or prosecution either on behalf of or against the City, nor any contract entered into by the City nor for its benefit, nor any franchise granted by the City, nor pending proceedings for the authorization of public improvements or the levy of assessments therefor.

Except as contrary intent appears herein, all acts of Council shall continue in effect until amended or repealed.

CODIFIED ORDINANCES OF BEACHWOOD

CERTIFICATION

We, Martin S. Horwitz, Mayor, and Whitney Crook, Clerk of Council, of Beachwood, Ohio, pursuant to Ohio Revised Code 731.23 and 731.42, hereby certify that the general and permanent legislation of the City of Beachwood, Ohio, as revised, arranged, compiled, numbered, codified and printed herewith in component codes, is correctly set forth and constitutes the Codified Ordinances of the City of Beachwood, Ohio, 1969, as amended to December 2, 2019 .

/s/ Martin S. Horwitz
Mayor/Safety Director

/s/ Whitney Crook
Clerk of Council

CITY OF BEACHWOOD

CHAPTER 133

Department of Law

- 133.01 Law Director; appointment. (Repealed)
- 133.02 Duties; qualifications.
- 133.03 Hiring of assistants or special counsel.
- 133.04 Compensation.
- 133.05 Law Director not required to be resident or elector.
- 133.06 Limitation on duties of Law Director and assistants.

CROSS REFERENCES

Establishment - see CHTR. Art. V, Sec. 1
Appointment, duties and qualifications of Law Director - see
CHTR. Art. V, Sec. 2
Annual report to Council - see Ohio R.C. 733.62
Authority to settle moral claims - see ADM. 131.04

133.01 LAW DIRECTOR; APPOINTMENT. (REPEALED)

(EDITOR'S NOTE: Section 133.01 was repealed by implication by the adoption of the voters of the revised City Charter on November 8, 1994. Article V, Section 2; of such Charter provides for the appointment of the Law Director.)

133.02 DUTIES; QUALIFICATIONS.

The Law Director shall serve the Mayor, Council, the administrative departments and the officers, boards and commissions of the Municipality as legal counsel in connection with Municipal affairs, and subject to the direction of the Mayor and Council. S/he shall represent the Municipality in all proceedings in court or before any administrative board or commission. S/he shall perform all other duties now or hereafter imposed upon municipal solicitors under the laws of Ohio, unless otherwise provided by ordinance of Council, and s/he shall perform such other duties consistent with his/her office as the Mayor or Council may request. No person shall act as Law Director unless duly admitted to the practice of law in the State of Ohio, and such person shall have had at least five years of experience in the active practice of law.

(Ord. 2014-51. Passed 4-21-14.)

133.03 HIRING OF ASSISTANTS OR SPECIAL COUNSEL.

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 his 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. The Assistant Law Director shall perform such duties in the Department of Law as are designated by the Director of Law, and shall be responsible to and report directly to the Director of Law. In the absence or unavailability of the Law Director, the Assistant Law Director shall have the same authority and responsibility as the Law Director and shall act under the direction and control of the Law Director, the Mayor and Council, as provided herein and in the Charter.

(Ord. 2014-51. Passed 4-21-14.)

133.04 COMPENSATION.

- (a) The Law Director shall receive a salary as may be established by Council from time to time, which compensation shall cover all legal services rendered by him/her.
- (b) The Law Director shall receive benefits and be reimbursed for expenses as set forth in the Administrative Salary Ordinance, any other ordinance governing salaries and/or benefits which may be adopted by Council, and the Employee Policy Manual.

(Ord. 2014-51. Passed 4-21-14.)

133.05 LAW DIRECTOR NOT REQUIRED TO BE RESIDENT OR ELECTOR.

Neither the Law Director, his assistants, any special counsel nor any other attorney or firm of attorneys designated or employed by authority hereof shall be required to be residents or electors of the Municipality.

(Ord. 2014-51. Passed 4-21-14.)

133.06 LIMITATION ON DUTIES OF LAW DIRECTOR AND ASSISTANTS.

Notwithstanding any other provision of this Chapter or of the Ohio Revised Code, neither the Law Director nor any Assistant Law Director or Special Counsel hired by Council shall have any obligation or authority to provide legal services to the Beachwood City School District.

(Ord. 2014-51. Passed 4-21-14.)

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INTRODUCED BY:

ORDINANCE NO. 2020-165

AN ORDINANCE APPOINTING THE LAW FIRM OF KENNETH J. FISHER CO., LPA AND ATTORNEY KENNETH J. FISHER AS SPECIAL COUNSEL FOR THE CITY OF BEACHWOOD, OHIO, ESTABLISHING COMPENSATION; AND DECLARING THIS TO BE AN URGENT MEASURE

WHEREAS, in anticipation of a threatened lawsuit being filed against the City, City Council desires to engage the firm Kenneth J. Fisher Co., LPA and appoint attorney Kenneth J. Fisher 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) The Mayor is hereby authorized and directed to enter into an agreement to engage the firm of Kenneth J. Fisher Co., LPA and appoint attorney Kenneth J. Fisher as Special Counsel for the City of Beachwood, Ohio to provide legal services related to a lawsuit currently being threatened against the City based upon an hourly rate of Two Hundred and Fifty Dollars (\$250.00) per hour.

(b) The law firm of Kenneth J. Fisher Co., LPA is engaged and attorney Kenneth J. Fisher is hereby appointed as Special Council.

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.

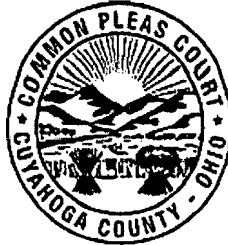
Attest: I hereby certify this legislation was duly adopted on the 7th day of December, 2020, and presented to the Mayor for approval or rejection in accordance with Article III, Section 8 of the Charter on the 8th day of December, 2020.

Clerk

Approval: I have approved this legislation this 8th day of December, 2020 and filed it with the Clerk.

Mayor

EXHIBIT H



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Appeals

**New Case Electronically Filed: ORIGINAL ACTION (WRIT)
December 8, 2020 14:55**

By: PETER G. PATTAKOS 0082884

Confirmation Nbr. 2131749

STATE EX. REL MIKE BURKONS

CA 20 110139

vs.

CITY OF BEACHWOOD

Judge:

Pages Filed: 65