

IN THE SUPREME COURT OF OHIO

JAMES E. PIETRANGELO, II,	)	Case No. 2015-0110
	)	
Appellant,	)	On Appeal from the Lorain County Court of
	)	Appeals, Ninth Appellate District
v.	)	
	)	Case No. 14-CA-010644
CITY OF AVON LAKE, OHIO,	)	
	)	
Appellee.	)	

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**MEMORANDUM OPPOSING PLAINTIFF-APPELLANT'S MOTION TO DISQUALIFY**

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## INTRODUCTION

Plaintiff has made three unsuccessful attempts to disqualify counsel for Appellee City of Avon Lake, Ohio (the “City”) in the trial and appeals courts.<sup>1</sup> He now moves again for the same relief, submitting a brief similar to earlier filings, in an effort to deprive the City of its chosen counsel, who have served in this capacity for almost a year and a half.

Plaintiff acknowledges that disqualification is a “drastic measure [that] courts should hesitate to impose except when absolutely necessary,” and that it “is absolutely necessary only if real harm is likely to result from failing to [disqualify].” Pl. Mot. at 4 (quoting *Akron v. Carter*, 190 Ohio App.3d 420, 429, 2010-Ohio-5462, 942 N.E.2d 409 (9th Dist.)). Plaintiff has failed to establish that disqualification is absolutely necessary, or that real harm is likely to result from failing to disqualify.

Plaintiff cannot satisfy three gateway issues. First, Plaintiff has no standing to raise an alleged financial conflict of interest because he has no connection to the City’s counsel, and he has not shown a conflict of interest exists.

Second, Plaintiff identifies no actual harm from the City’s representation by Ms. Koesel and Ms. Turnbull, nor any reason why disqualification is necessary to prevent that supposed harm. In fact, Plaintiff acknowledges his position is “hypertechnical.” Pl. Mot. at 8.

Third, the City has considered, waived, and overridden the “conflict” by enacting Ordinance Nos. 127-2013 and 162-2013 (which appoint Ms. Koesel and Ms. Turnbull as counsel under certain conditions and supersede any prior conflicting ordinances), and Ordinance No. 138-2014 (which, as a backstop measure, waives any conflict of interest resulting from the engagement of Ms. Koesel, Ms. Turnbull, or their firm).

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<sup>1</sup> Plaintiff made an oral motion to disqualify Ms. Koesel on October 17, 2013, which the trial denied that day. Six months later, Plaintiff filed a written motion to disqualify that the trial court denied on May 9, 2014. Plaintiff filed another motion to disqualify in Case No. 14-CA-01584, which was denied as moot after the Court determined it lacked jurisdiction to hear that appeal.

Aside from these issues, Plaintiff's reading of the City's conflict of interest ordinances is wrong. Nothing in Avon Lake City Ordinances forbids assistant law directors from representing any other non-City clients, and payment for legal services does not constitute a "gift" or "favor." Accordingly, Plaintiff's Motion to Disqualify should be denied.

### ARGUMENT

#### **I. Plaintiff lacks standing to raise the alleged conflict.**

"[A] stranger to an attorney-client relationship lacks standing to complain of a conflict of interest in that relationship." *Morgan v. N. Coast Cable Co.*, 63 Ohio St.3d 156, 159-61, 586 N.E.2d 88 (1992) (complaining party lacked standing to raise conflict of interest based on attorney's alleged "personal financial interests" allegedly adverse to his client). "The prerequisite to disqualifying an attorney due to a conflict of interest is the existence of a prior or current attorney-client relationship between the party moving for disqualification and the attorney being sought for disqualification." *Skycasters LLC v. J.W. Didado Elec., Inc.*, 9th Dist. No. 23901, 2008-Ohio-4849, ¶18 (Sept. 24, 2008); *see also Whitschey v. Medina Cty. Bd. of Comm'rs*, 169 Ohio App.3d 214, 2006-Ohio-5135, 862 N.E.2d 535, ¶32 (9th Dist.) (same). This is true for any alleged conflict, including where an attorney's judgment may be affected by his own financial, business, property, or personal interests. *Morgan*, 63 Ohio St.3d at 159.

Plaintiff has no past or present attorney-client relationship with the City's counsel, and he is not otherwise a City representative. Therefore, under *Morgan*, Plaintiff lacks standing to raise any purported conflict of interest. The City or the law firm of Porter Wright Morris & Arthur, LLP are the proper parties to raise any purported financial conflict of interest.

Although Plaintiff notes "exceptions" to the *Morgan* rule, he cites no case where a court found that a party had standing to raise a *financial* conflict of interest without a pre-existing attorney-client relationship, or where a court raised the issue *sua sponte*. Pl. Mot. at 13. Rather, Plaintiff's authorities involved either judicial practice matters (i.e., *pro hac vice* admission) or

situations involving a direct and materially adverse conflict of interest. For instance, *Royal Indemnity Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E.2d 617 (1986), involved revocation of *pro hac vice* admission. *Mentor Lagoons, Inc. v. Teague*, 71 Ohio App.3d 719, 595 N.E.2d 392 (11th Dist. 1991), and *Carter*, 2010-Ohio-5462, involved *sua sponte* disqualification of lawyer serving as both attorney and witness in the same case. In *Carnegie Cos., Inc. v. Summit Props., Inc.*, 183 Ohio App.3d 770, 2009-Ohio-4655, 918 N.E.2d 1052, the attorney had previously represented the opposing party. And *Clucas v. Vojtech*, 119 Ohio App.3d 475, 695 N.E.2d 809 (9th Dist. 1997), involved an attorney's representing both an indemnitor and indemnitee in the same proceeding, after having drafted the contract with the applicable indemnity provision.

Plaintiff also asserts that his status as a resident provides him standing. Pl. Mot. at 14. Plaintiff cites no case law supporting his claim. His lone authority, *State ex rel. Kocak v. City of Solon*, 8th Dist. No. 87926, 2007-Ohio-412 (Feb. 1, 2007), involved standing in a mandamus action with respect to municipal officers' oaths of office, not disqualification of counsel over a purported financial conflict of interest. Plaintiff provides no justification for adopting a "residence" exception to the *Morgan* rule regarding standing to assert a conflict of interest.

**II. Plaintiff has failed to show a likelihood of real harm if the City is able to retain its chosen counsel.**

"Disqualification of a party's chosen lawyer . . . is a drastic measure [that] courts should hesitate to impose except when absolutely necessary," and that it is "absolutely necessary only if real harm is likely to result from failing to disqualify." *Carter*, 2010-Ohio-5462, ¶19.

Plaintiff has yet to explain how representation of the City by Ms. Koesel and Ms. Turnbull might be compromised by their employment with Porter Wright, or how any "real harm" is "likely" to result from that employment. Plaintiff only offers the conclusory assertion that "real harms . . . are the very harms considered to *per se* result from a conflict of interest." Pl. Mot. at 16. Plaintiff fails to specifically state how a real conflict of interest exists in this case.

Nor has Plaintiff explained why disqualification is “absolutely necessary”<sup>2</sup> to remedy any perceived conflict. Porter Wright pays Ms. Koesel and Ms. Turnbull a fixed sum for their work on behalf of firm clients; they do not receive additional compensation for their legal work on this particular matter—either from the City or from Porter Wright—and thus there is no tangible harm to assuage. Plaintiff speculates, without any factual support, that Ms. Koesel and Ms. Turnbull receive “some compensation” or “dividends” specifically for working on this case. Pl. Mot. at 17 n.7. Even if this were true, Plaintiff has not shown that such a *de minimis* interest in the case renders disqualification “absolutely necessary.” Indeed, *Morgan* recognized that mere “potential” and “minimal” interests are not sufficient to require disqualification. *Morgan*, 63 Ohio St.3d at 160.

Absent demonstrating that disqualification is “absolutely necessary” because “real harm” is “likely” to result from the representation, his motion should be denied.

**C. The City has considered and waived any alleged conflicts of interest.**

Plaintiff asserts that representation by Ms. Koesel and Ms. Turnbull violates Avon Lake Ordinances 254.01 (general conflicts of interest) and 254.06 (gifts or favors). Pl. Mot. at 5-6. The Court need not reach the merits of Plaintiff’s argument because the City has waived, superseded, or otherwise overridden those statutes regarding the representation by Ms. Koesel, Ms. Turnbull, and their firm.

Avon Lake Ordinances 254.01 and 254.06 were enacted in 1965. In October and December 2013, the City passed emergency Ordinances 127-2013 and 162-2013, respectively. Under the Avon Lake City Charter, emergency ordinances have the same force of law as non-

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<sup>2</sup> Plaintiff asserts that the continued representation of the City by Ms. Koesel and Ms. Turnbull “obviously gives appearance of a conflict of interest or of impropriety,” that it “resembl[ed] a bribe or inducement,” and “enable[s] self-dealing, and reduc[es] public trust.” Pl. Mot. at 7, 8. Plaintiff has not explained how an ordinary citizen would view representation by Ms. Koesel and Ms. Turnbull as a “bribe” or otherwise a crime. Further, courts require identification of specific harms to order disqualification, not simply characterizations.

emergency ordinances. Avon Lake City Charter §§ 10, 11.<sup>3</sup> These ordinances (1) permit Porter Wright to defend the City in this case; (2) appoint Ms. Koesel and Ms. Turnbull as Special Assistant Law Directors “for this matter”; and (3) allow compensation to Porter Wright for up to \$80,000, to “be paid upon approval voucher.” Pl. Apr. 9, 2014 Mot. to Disqualify, Exs. 2, 3.

Further, to eliminate any question as to the City’s intent to waive any purported conflict of interest, on October 27, 2014, the City enacted emergency Ordinance No. 138-2014 (originally proposed as Temporary Legislation No. 10408), which “waiv[ed] any conflict of interest resulting from the engagement of the law firm Porter, Wright, Morris and Arthur LLP, and the appointment of Margaret Koesel and Tracey Turnbull as Special Assistant Law Directors in the case filed by James E. Pietrangelo II” (omitting capitalization). Moreover, Ordinance No. 138-2014 repeals all other Avon Lake Ordinances only to the extent that they conflict with it—that is, to the extent that any conflicts ordinances apply, Ordinance No. 138-2014 explicitly carves out an exception for Ms. Koesel’s and Ms. Turnbull’s representation. See Ex. D, Executed Ordinance No. 138-2014, § 2. Again, this ordinance has the same force of law as non-emergency ordinances.

Whether deemed a waiver of any potential conflicts of interest, a repeal by implication,<sup>4</sup> a

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<sup>3</sup> Plaintiff asserts that emergency ordinances do not have the same effect of law as “codified” or “permanent” ordinances. Pl. Mot. at 22 n.8. Plaintiff’s distinction between “temporary” and “emergency” ordinances has no basis in fact or law, and is contradicted by Avon Lake’s City Charter. All of these ordinances were enacted pursuant to City Council’s “declaring an emergency.” See Ex. A, Avon Lake City Council Minutes, 10/15/2013, at 4-5; Ex. B, Avon Lake City Council Minutes, 12/9/2013, at 9; Ex. C, Avon Lake City Council Minutes, 10/27/2014, at 9-10.

<sup>4</sup> *Peppers v. Beier*, 75 Ohio App.3d 420, 425-26, 599 N.E.2d 793 (3d Dist. 1991) (later-enacted ordinance repealed an earlier ordinance by implication because the two were inconsistent). The City does not assert that the prior conflicts ordinances were repealed entirely, but that they are repealed by implication for the specific representation by Ms. Koesel and Ms. Turnbull in this matter. Indeed, Ordinance No. 138-2014 expressly states that it repeals other conflicts ordinances “to the extent, but only to the extent, [that] other ordinances are in conflict with this ordinance.” Plaintiff’s case law and analysis arguing that repeals by implication are disfavored therefore are inapposite, as those cases relate to a complete repeal of a statute. See Pl. Mot. at 17-23.

later-enacted ordinance controlling over an earlier one,<sup>5</sup> or a specific ordinance controlling over a general one,<sup>6</sup> the City has considered and determined that representation by Ms. Koesel and Ms. Turnbull does not constitute a conflict of interest, and that to the extent there was a potential conflict of interest it has been considered and waived.

There is no dispute as to the City's intent in passing ordinances 127-2013, 162-2013, and 138-2014, and Plaintiff has offered no justification for this Court to countermand the City's considered judgment as to how to best designate Ms. Koesel and Ms. Turnbull for purposes of their representation in this case. As Plaintiff acknowledges in his motion, matters relating to municipal officers and employees are purely local matters. Pl. Mot. at 25 (citing and quoting cases regarding home rule authority).

Plaintiff also asserts that these ordinances do not assist the City because Avon Lake conflict ordinances are "not waivable [sic]" and require repeal before they can be overridden. Pl. Mot. at 15 & n.6. Plaintiff cites no authority for support. Sections 10 and 11 of the Avon Lake City Charter expressly repudiate any "hierarchy" between emergency and non-emergency (what Plaintiff calls "permanent") ordinances. By asking this Court to elevate certain ordinances, Plaintiff asks this Court to override the City Charter. This Court should decline Plaintiff's invitation absent demonstrated and real harm.

Plaintiff also asserts that "belated" Ordinance No. 138-2014 constitutes an "admission" that there was a conflict of interest. Pl. Mot. at 15-16 n.6. The commentary to the ordinance confirms, however, that the ordinance was enacted solely to prevent Plaintiff from continuing

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<sup>5</sup> *Dade v. City of Bay Village*, 8th Dist. No. 97728, 2006-Ohio-6416, ¶163 (Dec. 7, 2006) (later-enacted municipal ordinance controlled over prior inconsistent ordinance).

<sup>6</sup> *State ex rel. Stokes v. Probate Ct. of Cuy. Cty.*, 17 Ohio App.2d 242, 250, 246 N.E.2d 607 (8th Dist. 1969) ("A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms." (quoting *W. & S. Indemn. Co. v. Chicago Title & Trust Co.*, 128 Ohio St. 422 (1934)); *State ex rel. Bd. of Educ. v. Schumann*, 7 Ohio St.2d 41, 43-44, 218 N.E.2d 180 (1966) ("A special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision." (citation omitted)).

his attack against the City's counsel. *See* Meeting Minutes, Ord. No. 138-2014 ("The Trial Court determined there is no such conflict and the City is within its rights to retain Ms. Koesel and Ms. Turnbull. Mr. Pietrangelo has raised the issue on other occasions, and therefore, the Law Director has recommended this ordinance to prevent such further action by Mr. Pietrangelo.").

Nor was the City's decision to waive any conflicts of interest "belated." City Council passed Ordinance No. 127-2013 on October 15, 2013, before Ms. Koesel and Ms. Turnbull entered an appearance for the City.

In short, the City's representation by Ms. Koesel and Ms. Turnbull was validly, expressly, and legally authorized by the City pursuant to City ordinances enacted through regular government procedures. To the extent that any conflict of interest may have existed, the City considered and waived it. Plaintiff offers no contrary evidence.

**D. Representation of the City does not violate Avon Lake Ordinance Sections 254.01 or 254.06.**

Aside from the three "gateway" issues that Plaintiff cannot overcome, Plaintiff cannot establish a conflict of interest under the plain terms of Avon Lake Ord. §§ 254.01 or 254.06.

**1. Porter Wright's payment of a fixed sum to Ms. Koesel and Ms. Turnbull is not a "gift" or "favor" under Section 254.06.**

Plaintiff asserts that Ms. Koesel and Ms. Turnbull have illegally received "valuable gifts" from Porter Wright, "a City vendor," and therefore violated Avon Lake Ordinance § 254.06. Pl. Mot. at 7. By definition, a "gift" or "favor" is something provided for free. *See* Black's Law Dictionary 709 (8th ed. 2004) (defining "gift" as "the voluntary transfer of property to another without compensation"). On its face, Section 254.06 was intended to prohibit persons interested in business dealings with the City from providing free services or things to City employees. Plaintiff cites no authority suggesting that the ordinance should be interpreted otherwise. *See* Pl. Mot. at 25-27. Porter Wright pays the City's counsel fixed compensation for their work; Plaintiff provides no evidence that they receive additional compensation for their work on this particular

matter.

Rather, the applicable ordinance is Section 606.17, which governs situations where public officials<sup>7</sup> “[h]ave an interest in the profits or benefits of a public contract.”<sup>8</sup> See Avon Lake Code § 606.17(a)(4), (5). But it is not a violation of Section 606.17 “for a chief legal officer of a municipality . . . to appoint assistants and employees in accordance with Ohio R.C. 733.621 and 2921.421[.]” Avon Lake Code § 606.17(f).<sup>9</sup>

Plaintiff does not argue that the City’s appointment of Ms. Koesel and Ms. Turnbull violated R.C. 2921.421. See Pl. Mot. at 31-32. Although Plaintiff initially conceded in the trial court that the City complied with R.C. 733.621, he now argues that because City Council appointed Ms. Koesel and Ms. Turnbull as assistant law directors, not the City Law Director, R.C. 733.621 has been violated. See Pl. Mot. at 31-32. But R.C. 733.621 does not state that the Law Director has exclusive authority to appoint assistant law directors—it states that appointment of an assistant from the Law Director’s own law firm does not violate conflict of interest provisions so long as certain conditions are met. Further, Law Director Lieberman attended the October 15, 2013 City Council meeting, where City Council adopted Ordinance 127-2013, and he provided a litigation update to the City Council. See Ex. A, Avon Lake City Council Minutes, 10/15/2013, at 1-2. The City Council’s authorization of legal funds for its defense is consistent with the Law Director’s previous appointment of Ms. Koesel and Ms. Turnbull as assistant law directors. *Id.* at 4-5. Accordingly, there is no conflict of interest that would require

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<sup>7</sup> “Public officials” are defined as “[a]ny elected or appointed officer, employee, or agent of the State or any political subdivision thereof.” Avon Lake Code § 606.01(r).

<sup>8</sup> A “public contract” is defined as, among other things, “a contract for the purchase . . . of . . . services by or for use of . . . [a] political subdivision[.]” Avon Lake Code § 606.17(h)(2)(A).

<sup>9</sup> Plaintiff argues that R.C. 309.06 and 2921.421 require that any assistant law directors be from a municipality law director’s own firm. See Pl. Mot. at 32. But those provisions do not contain such words of exclusivity. Rather, they merely state that appointment of an assistant from the law director’s own law firm does not violate conflict of interest provisions so long as certain conditions are met. Since Ms. Koesel and Ms. Turnbull are not partners or associates of Law Director Lieberman’s firm, their appointment is necessarily consistent with R.C. 309.06 and 2921.421. Compare *Jacobs v. Jacobs*, 102 Ohio App.3d 568, 572 (9th Dist. 1995) (“[A] court cannot . . . add words not included [in a statute] to reach a desired result.”).

disqualification.<sup>10</sup>

Even if a salary or other fixed compensation arrangement could constitute a “gift,” Plaintiff still cannot establish a violation of Section 254.06. Plaintiff asserts that Section 254.06 was violated because Ms. Koesel and Ms. Turnbull were paid “as *Special Assistant Law Directors* and/or for their work for [the City] on the instant case.” Pl. Mot. at 6 (emphasis in original). But as noted above, Ms. Koesel and Ms. Turnbull do not receive any additional compensation for working on this case. They also receive no compensation from the City, as Plaintiff concedes. Pl. Mot. at 5-6. That is, Ms. Koesel and Ms. Turnbull have not received any additional money for their work on behalf of the City.

**2. The City’s representation does not violate Section 254.01.**

Plaintiff also asserts that Ms. Koesel’s and Ms. Turnbull’s representation violates Avon Lake Ordinance § 254.01, which states that “[n]o elected or appointed City official or employee, whether paid or unpaid, shall engage in any business or transaction or have a financial or other private interest, directly or indirectly, *which is in conflict with the discharge of his or her official duties*” (emphasis added). See Pl. Mot. at 5.

Plaintiff has not demonstrated how Porter Wright’s payment of a fixed sum to counsel—which is not impacted by this case—creates a conflict for Ms. Koesel or Ms. Turnbull in the discharge of their duties as special assistant law directors. Plaintiff’s belief that a conflict may exist does not establish a likelihood of real harm requiring disqualification. See *Carter*, 2010-Ohio-5462, at ¶19. For this reason as well, Plaintiff’s Motion should be denied.

Plaintiff’s assertions of financial conflicts of interest are also unsupported by law. Plaintiff argues that Ms. Koesel and Ms. Turnbull have charged a billing rate higher than that

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<sup>10</sup> Plaintiff argues that Section 606.17 does not undermine Sections 254.01, 254.02, or 254.06, which remain in full force and effect. Pl. Mot. at 29-31. Contrary to this contention, the City has never argued that Section 606.17 supersedes all other conflict ordinances. Rather, the City argues that to the extent any conflict ordinance applies to this case, Section 606.17 applies, rather than Section 254.06, because Ms. Koesel and Ms. Turnbull have not received “gifts” from Porter Wright. The City separately argues that Sections 254.01 does not preclude the City’s representation by Ms. Koesel and Ms. Turnbull, for the reasons stated below.

charged by the City's law director. Pl. Mot. at 8-9. Plaintiff cites no statute or case law precluding counsel from charging a rate in excess of the Law Director's. Further, he concedes he does not know Porter Wright's billing rate. Pl. Mot. at 9 (saying that Ms. Koesel's and Ms. Turnbull's "rates were/are almost certainly higher than that of Avon Lake's current Law Director," and that "Koesel and Turnbull themselves also may have received/receive dividends on those billings").<sup>11</sup>

That aside, the City's 2013 emergency ordinances, stating that Porter Wright's fees shall "be paid upon approval voucher submitted," would supersede any restrictions in earlier ordinances. Although Plaintiff asserts that the 2013 emergency ordinances mean "only that Porter Wright would upon approved voucher be paid its market rate for provision of legal services . . . and/or that Koesel and Turnbull . . . would be paid a public rate upon approved voucher," Pl. Mot. at 27, no such language appears in the ordinances, and Plaintiff cites no legislative history or legal authority supporting his interpretation. More importantly, Plaintiff has no standing to assert the rights of the City—if the City believes it is being overcharged for legal services, it can discharge Ms. Koesel and Ms. Turnbull or sue to recover monies.

Plaintiff also asserts that Ms. Koesel and Ms. Turnbull are immediately responsible to Porter Wright, and therefore cannot be to the City or the city law director. Pl. Mot. at 9. Again, no evidence demonstrates that Ms. Koesel and Ms. Turnbull are not immediately responsible to the City or its law director. *See* Pl. Mot. at 28-29 (calling the City's argument "absurd" and "disingenuous," and claiming his interpretation is "obviously" correct, without citing legal support). Plaintiff also provides no authority to support his assertion that a law director cannot be "immediately responsible" to more than one entity; Section 37 of the Avon Lake City Charter contains no such exclusivity provision.

Finally, Plaintiff asserts that an assistant law director cannot work on *any* non-City

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<sup>11</sup> Plaintiff suggests that the City "illegally" denied his public records request for certain information. Pl. Mot. at 9. Plaintiff's public records request is pending in a separate mandamus action before the Ninth District Court of Appeals.

matters. Pl. Mot. at 9-10, 28-19 & n.12. There is no exclusivity requirement in the City's conflict of interest ordinances. Section 254.02 prohibits appointed City employees from "appear[ing] on behalf of private interests before any agency of the City," and Section 254.03 prohibits City employees from "represent[ing] private interests in any action or proceeding against the interest of the City in any litigation to which the City . . . is a party[.]" Neither provision categorically prohibits a City employee from representing non-City persons or entities. In fact, Section 254.02 expressly states that it does *not* "prohibit appearances in the City Municipal Court on matters in which the City or any agency thereof is not a party."<sup>12</sup> Plaintiff's authorities do not state to the contrary either.<sup>13</sup>

Since their appointment, Ms. Koesel, Ms. Turnbull and Porter Wright have not appeared on behalf of private interests before an agency of the City, nor have they represented private interests in a manner adverse to the City. There is no conflict of interest. Neither Ms. Koesel nor Ms. Turnbull's representation of the City violate the City's conflict of interest ordinances.

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<sup>12</sup> Plaintiff argues that Section 254.02 does not apply because Ms. Koesel and Ms. Turnbull appear on behalf of the City in this action, where "the City of Avon Lake is a party." Pl. Mot. at 28-29. By allowing representations in which the City is not a party, Section 254.02 definitively shows Plaintiff's exclusivity position to be false. If the City did not intend its law directors or assistant law directors to appear on behalf of any entities aside from the City, it would not have enacted Section 254.02, the exception that expressly allows other representations *so long as they are not adverse* to the City.

<sup>13</sup> Avon Lake Charter Section 37 requires the Law Director to prosecute and defend all complaints, suits, and controversies in which the City is a party, but it does not preclude the Law Director or any appointed assistant Law Directors from representing other clients. To the extent that any ambiguity existed, on October 27, 2014, the Avon Lake City Council enacted Ordinance No. 139-2014 clarifying that Section 37 "does not prohibit the Director of Law or any Assistant Director of Law from rendering legal services to or representing anyone other than the Municipality." Ex. E, Executed Avon Lake Ordinance No. 139-2014. Ohio Adv. Op. 96-006 does not support Plaintiff's position either, as it expressly *permits* a lawyer to represent clients in civil matters while serving as a city councilperson so long as certain restrictions are heeded. Ms. Koesel and Ms. Turnbull are not city councilpersons, and thus Opinion 96-006 is inapplicable. Plaintiff improperly suggests that Opinion 96-006 states the exact opposite of its holding. *See* Pl. Mot. at 29.

Ohio Adv. Op. 07-004 merely states that Ethics Rule 1.7 applies to law directors and assistant law directors, but does not state or imply that appointed assistant law directors may not carry out other non-City representations. Ohio Adv. Op. 91-011 and 2006-007 interpret obligations of judges under conflict of interest provisions, not those of appointed assistant law directors.

## **CONCLUSION**

For the foregoing reasons and the reasons set forth in its Memorandum Regarding Jurisdiction, Defendant-Appellee City of Avon Lake respectfully requests that Plaintiff's "de novo" motion to disqualify be denied and that the City be awarded the costs and expenses, including the attorneys' fees it incurred to defend against this motion.

Respectfully submitted,

/s/ Tracey L. Turnbull

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Attorneys for Appellee, The City of Avon Lake, Ohio

**CERTIFICATE OF SERVICE**

A copy of the foregoing was sent via regular U.S. Mail this 23<sup>rd</sup> day of February, 2015, to the following:

James E. Pietrangelo, II  
33317 Fairport Drive  
Avon Lake, OH 44012

/s/ Tracey L. Turnbull  
Tracey L. Turnbull  
Attorney for City of Avon Lake, Ohio

**MINUTES OF THE RESCHEDULED MEETING  
OF THE AVON LAKE MUNICIPAL COUNCIL  
HELD OCTOBER 15, 2013**

The rescheduled meeting of the Avon Lake Municipal Council was called to order on October 15, 2013 at 7:30 P.M. in the Council Chamber with Council President O'Donnell presiding.

Mr. Kos led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council President Marty O'Donnell; Council Members Dan Bucci, Jennifer Fenderbosch, Rob James, David Kos, Larry Meiners, John Shondel; Mayor Zilka; Law Director Abe Lieberman; Engineering Department Manager Joseph Reltz; Finance Director Nancy Bryan; and Clerk of Council Barbara Dopp.

**APPROVAL OF MINUTES**

The minutes of the September 23, 2013 Regular Council Meeting were approved as prepared and published.

**MAYOR'S REPORT**

Mayor Zilka made the following announcements.

A third drug forum will be held November 19, 2013 at Avon Lake High School to address opiate addiction. The forum will focus on families with students enrolled at Learwood Middle School and Avon Lake High School, but is open to the entire community. Representatives from a number of support and treatment groups will be available to provide information.

A new security system is being installed at City Hall. Employees and Council members will be trained to use the new system which should be fully operational in about two weeks.

The Civil Service tests for the anticipated vacancy positions of Police Chief and Police Lieutenant have been administered. Candidates can challenge test results at this stage of the testing process.

**COUNCIL PRESIDENT'S REPORT**

The next Collective Committee meeting is scheduled for October 15<sup>th</sup> and the next Council meeting is scheduled for October 21<sup>st</sup>.

A budget meeting was held October 12<sup>th</sup>. Capital expenditures and departmental line items were discussed.

**ENGINEERING DEPARTMENT REPORT**

**EXHIBIT  
A**

## October 15, 2013 Council Meeting Minutes

The Engineering Department weekly update was distributed. Final work on the concrete street project will be completed by the end of the week.

Beginning the week of November 4<sup>th</sup>, branch pick-up will be suspended and leaf pick-up will begin. Branch pick-up will resume when leaf season is over. The leaf pick-up schedule will be posted on the Avon Lake website.

Residents who have not had their trash collected should call the City immediately at 930-4126 in order for it to be reported to the service provider.

Bids for trash collection services will be opened on October 23<sup>rd</sup>.

### **LAW DIRECTOR'S REPORT**

The Law Director's litigation update was distributed.

### **ENVIRONMENTAL COMMITTEE REPORT**

Mr. Shondel reported the following items were discussed at the October 9<sup>th</sup> meeting of the Environmental Committee: the propane conversion project; amendments to the hunting ordinance; and the monthly deer carcass pick-up report. In 2013, 15 carcasses were picked up from deer/vehicle collisions and, 75 non-vehicle related carcasses were picked up.

The next meeting of the Environmental Committee is scheduled for November 13, 2013 at 7:00 P.M.

### **HUMAN RESOURCES COMMITTEE**

Mr. Bucci reported the following items were discussed at the October 14<sup>th</sup> Human Resources Committee meeting: the Engineering Service Director job description, salary, and appointment; the hiring of part-time police officers; the payroll process; and workers' compensation vendors.

### **PUBLIC SERVICE COMMITTEE REPORT**

Mr. James reported the following items were discussed at the October 15<sup>th</sup> Public Service Committee meeting: department consolidation; reconfiguration of City buildings; and the purchase of picnic tables and benches.

The next meeting of the Public Service Committee is scheduled for October 28, 2013 at 6:00 P.M.

### **PUBLIC UTILITIES COMMITTEE REPORT**

Mr. Shondel reported on the October 3<sup>rd</sup> meeting of the Public Utilities Committee. A representative from NOPEC discussed potential aggregation for natural gas.

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The next meeting of the Public Utilities Committee is scheduled for November 7<sup>th</sup>.

Residents should report any power outage or surge, no matter how small, to First Energy at 888-LIGHTSS or 888-544-4877.

### **SEWER COMMITTEE REPORT**

The next meeting of the Sewer Committee is scheduled for November 20, 2013 at 6:30 P.M.

### **ECONOMIC DEVELOPMENT COMMITTEE REPORT**

Mr. Bucci reported the following items were discussed at the October 9<sup>th</sup> Economic Development Committee meeting: consulting services regarding the GenOn plant; and appointments to the West End Redevelopment Commission.

### **PLANNING COMMISSION REPORT**

Mrs. Fenderbosch reported on the October 8, 2013 Work Session between Planning Commission and the Zoning Board of Appeals. New language for the sign ordinance was discussed.

### **MOTIONS**

Mr. James moved to authorize the purchase of picnic tables and benches from Bright Idea Shops in the amount of \$13,888.87. The purchase will be funded through the Lorain County Solid Waste Management District recycling grant. The remaining grant funds will be used to purchase recycled plastic lumber to be used in the parks.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James

No: None

Motion carried.

Mr. Bucci moved to appoint Jeffrey Brausch and AnneMarie Homolka to the West End Redevelopment Commission and confirm the Mayor's appointment of Raymond Arth, Ryan Kozak and Tim Maloney. Mr. Bucci reviewed the resumes of the appointees.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James

No: None

Motion carried.

### **LEGISLATION**

Second Reading:

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Temporary Legislation #10215, A RESOLUTION SUPPORTING ISSUE 2 FOR LORAIN COUNTY COMMUNITY COLLEGE ON NOVEMBER 5, 2013, was read by title only.

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.

Mr. O'Donnell moved for passage of Temporary Legislation #10215. Issue 2 is a 1.5 mill renewal levy and a 0.6 mill increase to support the high quality, affordable education offered by LCCC, and to further the University Partnership program. If approved by the voters, Issue 2 will add an additional \$1.75 per month on property taxes per \$100,000 property value.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.  
**Ordinance No. 125-2013 adopted.**

Temporary Legislation #10218, AN ORDINANCE PROVIDING FOR THE DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY JAMES E. PIETRANGELO II, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10218. The ordinance authorizes an expenditure not to exceed \$10,000 for the Law Director and Assistant Law Director to defend the City in a legal action.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.  
**Ordinance No. 126-2013 adopted.**

Temporary Legislation #10219, AN ORDINANCE PROVIDING FOR THE DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY JAMES E. PIETRANGELO II, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James

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No: None  
Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10219. The ordinance authorizes an expenditure not to exceed \$40,000 for Margaret Koesel and Tracey Turnbull of Porter, Wright, Morris & Arthur LLP to act as Special Assistant Law Directors in an action filed against the City.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.  
**Ordinance No. 127-2013 adopted.**

**EXECUTIVE SESSION**

In compliance with Ohio Revised Code Section 121.22, Mr. Meiners moved to adjourn to Executive Session to discuss pending litigation and the purchase of land.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.

Adjournment to Executive Session: 8:00 P.M.

**RECONVENING OF OPEN COUNCIL MEETING**

The open Council Meeting was reconvened at 8:38 P.M.

Present: Mr. Bucci, Mrs. Fenderbosch, Mr. James, Mr. Kos, Mr. Meiners, Mr. O'Donnell, Mr. Shondel, Mayor Zilka, Law Director Lieberman.

Mr. Meiners moved for adjournment.

Yes: Kos, Meiners, O'Donnell, Shondel, Bucci, Fenderbosch, James  
No: None  
Motion carried.

Adjournment: 8:40 P.M.

Approved: \_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
Clerk of Council

**MINUTES OF THE REGULAR MEETING  
OF THE AVON LAKE MUNICIPAL COUNCIL  
HELD DECEMBER 9, 2013**

The regular meeting of the Avon Lake Municipal Council was called to order on December 9, 2013 at 7:30 P.M. in the Council Chamber with Council President O'Donnell presiding.

Mr. Bucci led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council President Marty O'Donnell; Council Members Dan Bucci, Jennifer Fenderbosch, Rob James, David Kos, Larry Meiners, John Shondel; Mayor Zilka; Law Director Abe Lieberman; Engineering Department Manager Joseph Reitz; Finance Director Nancy Bryan; and Clerk of Council Barbara Dopp.

**APPROVAL OF MINUTES**

The minutes of the November 12, 2013 Rescheduled Council Meeting and the November 25, 2013 Regular Council Meeting were approved as prepared and published.

**APPOINTMENT OF A POLICE LIEUTENANT AND A POLICE SERGEANT**

Temporary Legislation #10252, AN ORDINANCE CONFIRMING THE APPOINTMENT OF VINCENT MOLNAR AS LIEUTENANT IN THE AVON LAKE POLICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. Bucci moved for passage of Temporary Legislation #10252. The advancement of Lt. Streater to the position of Interim Assistant Police Chief created a vacancy for the position of Lieutenant. Sergeant Molnar scored the highest on the Civil Service tests and passed all assessments and has been recommended for the position of Lieutenant.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 158-2013 adopted.**

Temporary Legislation #10253, AN ORDINANCE CONFIRMING THE APPOINTMENT OF LESLIE CARRENDER AS SERGEANT IN THE AVON LAKE

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POLICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. Bucci moved for passage of Temporary Legislation #10254. The promotion of Sgt. Molnar to the position of Police Lieutenant created a Sergeant vacancy. Leslie Carrender scored the highest on the Civil Service tests and has been recommended for the position of Sergeant.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 159-2014 adopted.**

Law Director Lieberman administered the oath of office to Lt. Molnar and Sgt. Carrender.

#### **AWARD PRESENTATION**

The Central States Chapter of the Alliance for Community Media holds a video competition once a year called the Philo Festival of Media Arts. The Avon Lake Cable Advisory Commission received the Philo T. Farnsworth award for excellence in community programming for their show on bullying as part of the "Issues and Opinions" series. Mayor Zilka presented the award to Mary Pajak and Carole Murphy, Cable Advisory Commission members.

#### **MAYOR'S REPORT**

Mayor Zilka made the following announcements.

Mayor Zilka met with the Mayors of Sheffield Lake and Sheffield Village and the new plant manager of the Ford Assembly Plant and a Ford representative from Dearborn to discuss the future of the plant. There are plans to put in a mid-size truck facility at the plant next year.

The Mayor and Council President O'Donnell met with representatives from Cameron which purchased IPS located on Walker Road. They intend to triple the workforce at that facility.

Jeff Westerfield of the Ohio Department of Natural Resources has made his recommendations for modification of the Avon Lake deer ordinance to allow the City to better manage the deer herd.

### **COUNCIL PRESIDENT'S REPORT**

The next Collective Committee Meeting is scheduled for December 16<sup>th</sup> and the next regular Council Meeting is scheduled for December 23<sup>rd</sup>.

Council Elect held an organizational meeting on November 18<sup>th</sup>. Mr. O'Donnell was elected Council President and Mr. Meiners was elected Council President Pro Tem. All Council committee assignments will remain the same; Council will look into reorganizing the committee structure in the first quarter of 2014.

There is a vacancy on the Zoning Board of Appeals and the Avon Lake Historical Preservation Commission. Interested residents should send a letter of interest and a resume to the Clerk of Council at 150 Avon Belden Road or by e-mail to [bdopp@avonlake.org](mailto:bdopp@avonlake.org).

### **ENGINEERING DEPARTMENT REPORT**

The Engineering Department weekly update was distributed.

The Service Department is completing its seventh complete pass through the City for leaf pick-up. By the end of the week one chipper truck will be put into service to pick up branches.

The District 9 Committee is making recommendation to Columbus for funding of the Lear Road/Krebs Road Intersection Project. The project will add a turn lanes and a traffic light with pre-emption for the safety forces.

The issues with the emergency generator project at City Hall should be resolved by the end of the month.

### **LAW DIRECTOR'S REPORT**

The Law Director's litigation update was distributed.

### **ENVIRONMENTAL COMMITTEE REPORT**

The Environmental Committee is scheduled to meet December 12, 2013 at 7:00 P.M. in the Council Conference Room. Mr. Shondel gave the deer carcass pick-up report; the rate has almost doubled over the past two years.

### **HUMAN RESOURCES COMMITTEE REPORT**

Mr. Bucci reported on the items discussed at the December 2, 2013 Human Resources Committee meeting which will appear on tonight's agenda.

### **PUBLIC SERVICE COMMITTEE REPORT**

## December 9, 2013 Council Meeting Minutes

The Public Service Committee held a joint committee meeting with the Finance Committee on December 9, 2013 to discuss the Tequity contract. No action was taken.

The Public Service Committee will not hold its regularly scheduled December meeting on December 23<sup>rd</sup>.

Mayor Zilka stated there will be informational meetings scheduled for residents regarding the new trash collection contract. Residents will get an explanation of the new program in their next bill. The cart system should be implemented by April 1, 2014. The three can sizes are on display at the Service Department for residents to inspect. The billing for the first quarter will be the standard rate for the 96 gallon can. Within the first quarter, customers will be able to choose the can size they wish to receive and billing will be adjusted accordingly in the second quarter bill. If customers contact Allied Waste in the month of January and opt for a smaller can, they will be credited for the months of February and March. Unlimited pick-up will continue through the first quarter until all cans are delivered. After April 1<sup>st</sup>, there will be a designated week for unlimited pick-up.

### **PUBLIC UTILITIES COMMITTEE REPORT**

Mr. Shondel reported the Public Utilities Committee recommended an ordinance authorizing NOPEC to take action necessary to offer an opt-out program for natural gas aggregation.

### **SEWER COMMITTEE REPORT**

The next meeting of the Sewer Committee is scheduled for December 12, 2013 at 6:30 P.M.

### **PARKS & RECREATION COMMISSION REPORT**

The Parks & Recreation Commission will meet on December 18, 2013 at 7:00 P.M.

### **MOTIONS**

Mr. Bucci moved to accept the resignation of Tom Mealey from the Service Department effective January 1, 2014. Mr. Mealey is retiring after 34 years of service to the City of Avon Lake.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. Kos moved to instruct the Clerk of Council to return the form to the Division of Liquor Control indicating the City does not request a hearing in the matter of a liquor

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license transfer from M & R Dining Services LLC to Trumer Restaurant Group LLC. The Police Chief has no objection to the transfer request.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. Meiners moved to add Temporary Legislation #10261 to the agenda. The Law Director requested appropriations for litigation fees.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

### **LEGISLATION**

#### Third Readings:

Temporary Legislation #10242, AN ORDINANCE AUTHORIZING THE NAMING OF BLESER PARK.

Mr. James moved for passage of Temporary Legislation #10242. The park known as Bleser Park was never officially declared as such by City Council. There is a field within the park that was dedicated as Bleser Field in honor of Walter Bleser. Over time, the area surrounding the field became known as Bleser Park. The Parks and Recreation Commission determined it would be appropriate to formally name the park Bleser Park and recommended the same to the Public Service Committee. The Public Service Committee considered the recommendation and voted 4-0 to forward the recommendation to Council.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 154-2013 adopted.**

Temporary Legislation #10243, AN ORDINANCE AUTHORIZING THE RENAMING OF BLESER FIELD TO MANNINO FIELD.

Mr. James moved for passage of Temporary Legislation #10242. The Avon Lake Youth Baseball Federation (ALYBF) requested the Parks & Recreation Commission to name the field known as Bleser Field to Mannino Field. Mike Mannino has been involved with the ALYBF for many years as an officer and as a coach. The Parks & Recreation Commission realized there is no policy in place for re-naming parks or facilities. The current policy only addresses new names. The Commission revised its policy to address the re-naming situation. Since the Parks & Recreation Commission determined it was appropriate to elevate the Bleser name from a field to the entire park, it would be appropriate to re-name the field to Mannino Field. The

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descendants of Mr. Bleser had no objections to the re-naming of the field since the entire park would formally be named in honor of Mr. Bleser.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 155-2013 adopted.**

Second Readings:

Temporary Legislation #10244, AN ORDINANCE AWARDDING A CONTRACT FOR THE LEAR ROAD/WALKER ROAD INTERSECTION PROJECT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. James moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. James moved for passage of Temporary Legislation #10244. Five bids were received for the project. The lowest and best bid was submitted by Underground Utilities, Inc. in the amount of \$1,596,312.15. Avon Lake Municipal Utilities is responsible for \$279,489.50 of the project amount for waterline work. The City received a \$252,228 grant and a \$125,000 zero interest loan from Ohio Public Works Commission. The project will add right turn lanes at all four corners, install curbs, replace the water line, widen the road, and install new traffic lights.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 156-2013 adopted.**

Temporary Legislation #10245, AN ORDINANCE AUTHORIZING THE CITY TO ADOPT A \$1.27 PER QUARTER ADMINISTRATION FEE FOR PAYMENT OF THE ACCRUED AND FUTURE COSTS OF PARTICIPATION IN THE 2013 LORAIN COUNTY CONSORTIUM FOR COLLECTION, TRANSFER, AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIAL SERVICES, AND DECLARING AN EMERGENCY, was read by title only.

Mr. James moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

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Mr. James moved for passage of Temporary Legislation #10245. Avon Lake was involved in the Lorain County consortium. There were highly qualified experts who assisted in the preparation of the bid documents and agreements to execute the new trash contract that will become effective January 1, 2014. The consortium agreed to institute a small administration fee on customers' bills to pay the fees of the lawyers and professional consultants. This ordinance will authorize the fee beginning with the new contract in 2014.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 157-2013 adopted.**

First Readings:

Temporary Legislation #10251, AN ORDINANCE AUTHORIZING ALL ACTIONS NECESSARY TO EFFECT AN OPT-OUT NATURAL GAS AGGREGATION PROGRAM PURSUANT TO SECTION 4929.26 OHIO REVISED CODE DIRECTING THE COUNTY BOARD OF ELECTIONS TO SUBMIT A BALLOT QUESTION TO THE ELECTORS, AND DECLARING AN EMERGENCY, was read by title only.

At the December 2, 2013 Work Session, representatives from NOPEC gave a presentation on the opt-out natural gas aggregation program. Avon Lake has participated in an opt-out program for electricity since 2002. If Council wishes to move forward with the gas aggregation program the ordinance must be filed with the Board of Elections by February 5, 2014.

Temporary Legislation #10254, AN ORDINANCE CONFIRMING THE APPOINTMENT OF DUANE P. STREATOR AS POLICE CHIEF OF THE AVON LAKE POLICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Streator will become the Police Chief upon the upcoming retirement of Chief Owad. Mr. Streator has passed all Civil Service examinations and assessments.

Temporary Legislation #10255, AN ORDINANCE CONFIRMING THE APPOINTMENT OF JEFFREY SMITH AS LEADMAN IN THE SERVICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

The resignation of Mr. Mealey created a vacancy for the position of Leadman. After passing all Civil Service examinations, Mr. Smith has been recommended for the position of Leadman.

Temporary Legislation #10256, AN ORDINANCE CONFIRMING THE APPOINTMENT OF PAUL CASTERLINE AS LABORER IN THE SERVICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

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With the promotion of Mr. Smith to the position of Leadman, a Laborer position is vacant. After passing all Civil Service examinations, Mr. Casterline has been recommended to the position of Laborer.

Temporary Legislation #10257, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH WENTWORTH TECHNOLOGIES FOR COMPUTER SERVICES, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel  
No: None  
Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10257. The administration recommended a contract with Wentworth Technologies to purchase the CityForce software for Building, Zoning, and Service/Engineering/Planning. The total cost for software, maintenance, and set-up fees is \$31,108. This cloud technology will allow data sharing between the departments to provide more efficient service to the residents.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel  
No: None  
Motion carried.  
**Ordinance No. 160-2013 adopted.**

Temporary Legislation #10258, AN ORDINANCE PROVIDING FOR ADVANCES AND ADJUSTMENTS TO ESTIMATED REVENUES, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel  
No: None  
Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10258. The Finance Director determined certain financial advances and adjustments are needed for the immediate expenses of the City.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel  
No: None  
Motion carried.  
**Ordinance No. 161-2013 adopted.**

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Temporary Legislation #10259, AN ORDINANCE AMENDING ORDINANCE NO. 84-2013 TO MAKE APPROPRIATIONS FOR THE CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF AVON LAKE FOR THE YEAR ENDING DECEMBER 31, 2014, AND DECLARING AN EMERGENCY, was read by title only.

This ordinance establishes the 2014 budget for the City of Avon Lake. Several budget meetings were held with the administration, Finance Director, and Council to develop the budget.

Temporary Legislation #10260, AN ORDINANCE ADOPTING A RECOMMENDATION OF THE HUMAN RESOURCES COMMITTEE CHANGING THE WAGE RATE OF THE ELECTRICAL SAFETY INSPECTOR, AND DECLARING AN EMERGENCY, was read by title only.

David Gunsalus was hired as the Electrical Safety Inspector with the contingency that he would receive a \$3000 salary increase upon acquiring two certifications. Mr. Gunsalus has acquired the residential building inspector license. At this time, he will receive half of the amount until he receives the second license.

Temporary Legislation #10261, AN ORDINANCE PROVIDING FOR THE CONTINUED DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY JAMES PIETRANGELO II, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10261. The Law Director requested additional funds in the amount of \$40,000 to continue with the defense of the City of Avon Lake in an ongoing lawsuit.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

**Ordinance No. 162-2013 adopted.**

### **PUBLIC INPUT**

Jonathon Leonard, 184 Parsons Drive, thanked Council for officially naming Mannino Field on behalf of the Avon Lake Youth Baseball Field. Mr. Leonard read a letter from Mr. Mannino expressing his gratitude for being honored by having a field named after him.

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**EXECUTIVE SESSION**

In compliance with Ohio Revised Code Section 121.22, Mr. Meiners moved to adjourn to Executive Session to discuss pending litigation.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Adjournment: 8:50 P.M.

**RECONVENING OF OPEN COUNCIL MEETING**

The open Council meeting was reconvened at 9:15 P.M.

Present: Council President Marty O'Donnell; Council Members Dan Bucci, Jennifer Fenderbosch, Rob James, David Kos, Larry Meiners, John Shondel; Mayor Zilka; Law Director Abe Lieberman.

Mr. Meiners moved for adjournment.

Yes: Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell, Shondel

No: None

Motion carried.

Adjournment: 9:17 P.M.

Approved: \_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
Clerk of Council

**MINUTES OF THE REGULAR MEETING  
OF THE AVON LAKE MUNICIPAL COUNCIL  
HELD OCTOBER 27, 2014**

The regular meeting of the Avon Lake Municipal Council was called to order on October 27, 2014 at 7:30 P.M. in the Council Chamber with Council President O'Donnell presiding.

Mr. James led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council Members Dan Bucci, Rob James, David Kos, Larry Meiners, Marty O'Donnell, John Shondel; Mayor Zilka; Law Director Abe Lieberman; Director of Finance Steve Presley; Public Works Director Joseph Reitz; and Clerk of Council Barbara Dopp.

There being no objections, Mrs. Fenderbosch was excused from attendance at the meeting.

**PROCLAMATION**

Mayor Zilka presented a Proclamation to Nikki Schroeder for achieving the Division I Girls Golf State Championship.

**CORRESPONDENCE**

Kopf Builders submitted a letter requesting suspension of the rule requiring three readings and emergency passage of the final plat for Aqua Marine.

**MAYOR'S REPORT**

Bucky Kopf was honored at the annual Lorain County Alcohol and Drug Abuse Services (LCADA) banquet for his dedication and support for recovery programs dealing with alcohol and drug addiction.

A number of City officials and members of the Zoning Board of Appeals attended the Ohio Planning Association conference on October 17<sup>th</sup>.

Trick or Treat will be held on Thursday, October 30<sup>th</sup> from 6:00 – 7:30 P.M.

Election Day is November 4<sup>th</sup>. Residents may vote early by mail or in person at the Board of Elections or may vote in person on Election Day. Voting locations can be found on the Lorain County Board of Elections website, [www.loraincounty.com/election](http://www.loraincounty.com/election). The phone number is 440-244-3186. Avon Lake has two issues on the ballot which are renewal levies which will not raise taxes. Issue 12 is a three-year levy which supports the paramedic program. Issue 13 is a

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five-year levy which helps support the general operation of Avon Lake including, police, fire, street repair, snow removal, and recreation programs.

Residents are asked to support local businesses on November 29<sup>th</sup>, Black Friday. For every \$100 spent in independently owned stores, \$68 dollars returns to the community through taxes, payroll, and other expenditures. Through national chains, only \$43 stays in Avon Lake's economy.

### **COUNCIL PRESIDENT'S REPORT**

The next Collective Committee meeting is scheduled for November 3<sup>rd</sup> and the next regular Council meeting is scheduled for November 10<sup>th</sup>.

### **PUBLIC WORKS DEPARTMENT REPORT**

The Public Works weekly update was distributed.

Branch collection will end October 31<sup>st</sup>, as all trucks will be used for leaf pick-up. The leaf pick-up schedule will be posted on the Avon Lake website. The last yard waste collection will be with the November 24<sup>th</sup> collection and will resume with the first collection in April. Leaves are to be placed on tree lawns and are not to be placed in the street.

The Public Works Department is preparing documents to submit to the Army Corps of Engineers to rebuild the retaining wall at Veterans Memorial Park boat launch. The estimated cost is between \$25,000 - \$30,000.

### **LAW DIRECTOR'S REPORT**

The Law Department litigation update was distributed.

### **FINANCE DIRECTOR'S REPORT**

The Finance Department is working with the Mayor and department heads to compile the 2015 budget in preparation for the November 8<sup>th</sup> budget meeting.

### **ENVIRONMENTAL COMMITTEE REPORT**

Mr. Shondel read the minutes of the October 22, 2014 meeting of the Environmental Committee. The next meeting of the Environmental Committee is scheduled for November 8, 2014.

Mr. Shondel encouraged the teachers of the four Avon Lake elementary schools to deliver to City Hall any posters their students completed regarding the "Don't Feed the Wildlife" campaign by October 31<sup>st</sup>.

### **FINANCE COMMITTEE REPORT**

## October 27, 2014 Council Meeting Minutes

Mr. Meiners stated he has been pursuing financial data regarding the municipal pool for some time. Finance Director Presley submitted a detailed financial report on the pool operation for the last three years.

### **PUBLIC SERVICE COMMITTEE REPORT**

Mr. James reported on the results of the October 27, 2014 meeting of the Public Service Committee.

### **PUBLIC UTILITIES COMMITTEE REPORT**

Mr. Shondel reported on the success of the natural gas aggregation program in Avon Lake. The final statistics from NOPEC are as follows: the total number of households is 9411; the total service by natural gas is 7755; the total number of opt-out letters mailed is 5777; 323 customers chose to opt-out of the program which is 5.6%. The average is 5%. Customers will begin seeing NEXTRA/NOPEC on their Columbia Gas bills during November 2014.

### **SAFETY COMMITTEE REPORT**

Mr. Kos reported on the results of the October 22, 2014 Safety Committee meeting.

### **ZONING BOARD OF APPEALS REPORT**

Mayor Zilka reported on the results of the October 22, 2014 Zoning Board meeting.

### **MOTIONS**

Mr. Bucci moved to confirm the appointment by the Mayor of Jeffrey Coughlin to the Civil Service Commission for a term expiring December 31, 2017.

Mr. Coughlin will fill a vacancy on the Commission due to the resignation of John Morgan. Mayor Zilka reviewed Mr. Coughlin's qualifications.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

### **LEGISLATION**

#### Third Reading:

Temporary Legislation #10387R, AN ORDINANCE ADOPTING A REVISED JOB DESCRIPTION FOR THE POSITION OF FIRE CHIEF IN THE FIRE DEPARTMENT, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID

October 27, 2014 Council Meeting Minutes

POSITION, AND REPEALING ORDINANCE NO. 130-2011, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10387R. This and the following four ordinances pertain to the restructuring of the Avon Lake Fire Department. The revised job description clarifies the duties of the Fire Chief and who will be reporting directly to him.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 123-2014 adopted.**

Temporary Legislation #10388, AN ORDINANCE ESTABLISHING THE POSITION OF ASSISTANT FIRE CHIEF IN THE FIRE DEPARTMENT AND ADOPTING A JOB DESCRIPTION ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10388. Two Assistant Chiefs will be named as part of the department restructuring. The designated Assistant Chief will assume the duties of the Chief in his absence. Under the current structure there is no one to assume that role.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 124-2014 adopted.**

Temporary Legislation #10389, AN ORDINANCE ESTABLISHING THE POSITION OF CAPTAIN IN THE FIRE DEPARTMENT AND ADOPTING A JOB DESCRIPTION, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10389. The position of Captain is being created as part of the Fire Department restructuring. The Lieutenants will fill the Captain positions.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 125-2014 adopted.**

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Temporary Legislation #10390, AN ORDINANCE ADOPTING A REVISED JOB DESCRIPTION FOR THE POSITION OF LIEUTENANT IN THE FIRE DEPARTMENT, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND REPEALING ORDINANCE NO. 131-2011, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10390. With the creation of the position of Captain, the duties of the Lieutenants will change and the revised job description will clarify the new duties and responsibilities.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 126-2014 adopted.**

Temporary Legislation #10391, AN ORDINANCE SETTING THE SALARY FOR THE POSITION OF ASSISTANT FIRE CHIEF, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10391. The salary for the position of Assistant Fire Chief will be set at \$3,471.65 bi-weekly.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 127-2014 adopted.**

Temporary Legislation #10392, AN ORDINANCE ESTABLISHING THE POSITION OF PUBLIC WORKS DIRECTOR AND ADOPTING A JOB DESCRIPTION, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND REPEALING ORDINANCE NO. 141-2013, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10392. With the establishment of the Public Works Department, it is necessary to establish the position of the Director and adopt a job description to accurately define the duties of said position.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 128-2014 adopted.**

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Temporary Legislation #10393, AN ORDINANCE PROVIDING FOR THE APPOINTMENT OF JOSEPH REITZ TO THE POSITION OF PUBLIC WORKS DIRECTOR, ESTABLISHING THE RATE OF COMPENSATION FOR SAID POSITION, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10393. With the formation of the Public Works Department it is necessary to appoint a department director. Mr. Reitz has been serving as the Director of Service and Engineering.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 129-2014 adopted.**

Temporary Legislation #10394, AN ORDINANCE ADOPTING A JOB DESCRIPTION FOR THE POSITION OF DIRECTOR OF FINANCE, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND REPEALING ORDINANCE NO. 80-2008, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10394. The Finance Director will assume the duties of Contract Administrator and therefore, the Finance Director job description needs to be revised to reflect the new duties.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 130-2014 adopted.**

Temporary Legislation #10395R, AN ORDINANCE APPROVING WAGE INCREASES FOR FULL-TIME NON-BARGAINING UNIT PERSONNEL, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #10395R. This ordinance will approve 2% raises for all full-time non-bargaining unit employees effective July 1<sup>st</sup> of 2014, 2015, and 2016. This is the same increase that was approved in the bargaining unit contracts. These employees have not received wage increases for the past three years. The health care contribution for these employees will increase to 10% of the premium cost.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

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**Ordinance No. 131-2014 adopted.**

Temporary Legislation #10397, AN ORDINANCE AUTHORIZING THE PURCHASE OF PROPANE GAS, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Shondel moved for passage of Temporary Legislation #10397. This ordinance will approve a contract with AmeriGas for the purchase of propane fuel for City vehicles at the price of \$1.35 per gallon, plus the spot price published weekly at Mont Bellvieu, Texas in the Wall Street Journal; the current price is \$0.88 per gallon.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 132-2014 adopted.**

Temporary Legislation #10398, AN ORDINANCE AMENDING CODIFIED ORDINANCE CHAPTER 274.02, ENTITLED MEMBERSHIP, TERMS OF OFFICE, COMPENSATION, was read by title only.

Mr. Shondel moved for passage of Temporary Legislation #10398. The Environmental Affairs Board (EAAB) recommends amending its membership structure to remove the requirement of six members from industry to "up to six industry members" and allow for the appointment of an additional resident member to fill the fourteen member compliment.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 133-2014 adopted.**

**Second Reading:**

Temporary Legislation #10400, AN ORDINANCE CHANGING THE RANK OF CERTAIN MEMBERS FO THE AVON LAKE FIRE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

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Mr. Bucci moved for passage of Temporary Legislation #10400. With the creation of the rank of Captain in the Fire Department, there will be a change of rank. The current Lieutenants will become Captains under the reorganization.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 134-2014 adopted.**

**First Readings:**

Temporary Legislation #10405, AN ORDINANCE APPROVING A CHANGE ORDER TO THE CONTRACT WITH CLEMANS, NELSON, AND ASSOCIATES, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

Mr. Bucci moved for passage of Temporary Legislation #10405. The City retained Clemans Nelson & Associates to help with Human Resource issues and collective bargaining negotiations. The costs have exceeded the retainer by \$5000. This ordinance will authorize the change order to the contract.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 135-2014 adopted.**

Temporary Legislation #10406, AN ORDINANCE APPROVING THE FINAL PLAT FOR AQUA MARINE SUBDIVISION, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

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Mr. O'Donnell moved for passage of Temporary Legislation #10406. This plat is for the subdivision of three parcels from the original platted parcel for the construction of condominiums and apartments.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 136-2014 adopted.**

Temporary Legislation #10407, AN ORDINANCE TO AMEND APPROPRIATIONS FOR THE CURRENT AND OTHER EXPENDITURES OF THE CITY OF AVON LAKE FOR THE FISCAL YEAR 2014, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Meiners moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10407. The Finance Director determined certain appropriations are needed for the current expenses of the City.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 137-2014 adopted.**

Temporary Legislation #10408, AN ORDINANCE WAIVING ANY CONFLICT OF INTEREST RESULTING FROM THE ENGAGEMENT OF THE LAW FIRM PORTER, WRIGHT, MORRIS AND ARTHUR LLP, AND THE APPOINTMENT OF MARGARET KOESEL AND TRACEY TURNBULL AS SPECIAL ASSISTANT LAW DIRECTORS IN THE CASE FILED BY JAMES E. PIETRANGELO II, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

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Mr. O'Donnell moved for passage of Temporary Legislation #10408. Mr. Pietrangelo filed a suit in the Trial Court and in the Court of Appeals to have the skate park closed. Mr. Pietrangelo sought to disqualify the City's outside counsel, Ms. Koesel and Ms. Turnbull, claiming there was an unlawful interest in a public contract or a conflict of interest. The Trial Court determined there is no such conflict and the City is within its rights to retain Ms. Koesel and Ms. Turnbull. Mr. Pietrangelo has raised the issue on other occasions, and therefore, the Law Director has recommended this ordinance to prevent such further action by Mr. Pietrangelo.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 138-2014 adopted.**

Temporary Legislation #10409, AN ORDINANCE INTERPRETING THE OBLIGATIONS OF THE LAW DIRECTOR, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

Mr. O'Donnell moved for passage of Temporary Legislation #10409. This arose out of the Pietrangelo litigation. One of the ways Mr. Pietrangelo sought to disqualify the outside counsel was to argue that since they were appointed as Special Assistant Law Directors, they are required to serve in that position full-time with the exclusion of any other employment. The Trial Court ruled against Mr. Pietrangelo. To prevent any further motions on that basis, the Law Director recommended that Council interpret the section of the Charter dealing with the position of Law Director to specifically indicate that the Law Director and Assistant Law Director need not be full-time positions.

Yes: James, Kos, Meiners, O'Donnell, Shondel, Bucci

No: None

Absent: Fenderbosch

Motion carried.

**Ordinance No. 139-2014 adopted.**

## **MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS**

As part of the Art Beautification Project, art work from local artists is displayed at the Old Firehouse Community Center and at City Hall.

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Due to the recent discovery of the chronic wasting disease that affects deer and elk, the Ohio Department of Natural Resources is recommending that hunters have venison tested by the Ohio Department of Agriculture. Information of available on the ODNR website.

The Storybook Trail at the Avon Lake Public Library and the Unknown Seaman Memorial Marker Project were finalists in the Community Service category at the "Lorain County Beautiful" awards ceremony.

**PUBLIC INPUT**

Margaret Eberly, 4943 Green Ash Trail, Medina, presented plans for the Hampshire Highlands development which will be located on Webber Road.

Mr. Meiners moved for adjournment.

Adjournment: 8:35 P.M.

Approved: \_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
Clerk of Council

BY: Mr. O'Donnell

TEMP NO: 10408

ORDINANCE NO. 138-2014

AN ORDINANCE WAIVING ANY CONFLICTS OF INTEREST RESULTING FROM THE ENGAGEMENT OF THE LAW FIRM OF PORTER, WRIGHT, MORRIS AND ARTHUR, LLP AND THE APPOINTMENT OF MARGARET KOESEL AND TRACEY TURNBULL AS SPECIAL ASSISTANT LAW DIRECTORS TO DEFEND THE CITY IN CONNECTION WITH LITIGATION FILED BY JAMES E. PIETRANGELO, II; AND DECLARING AN EMERGENCY.

WHEREAS, James E. Pietrangelo, II filed suit against the City in an effort to close the City's skate park at Weiss Field (the "Litigation");

WHEREAS, by Ordinance No. 127-2013, the City authorized and directed the law firm of Porter, Wright, Morris And Arthur, LLP ("Porter") to defend and represent the City in connection with the Litigation;

WHEREAS, Margaret Koesel and Tracey Turnbull are members and/or employees of Porter;

WHEREAS, Ordinance No. 127-2013 also appointed Margaret Koesel and Tracey Turnbull as Special Assistant Law Directors with respect to the Litigation;

WHEREAS, it has been alleged that the foregoing arrangements violate the City's ordinances because they create a conflict of interest or result in an unlawful interest in a public contract;

WHEREAS, such allegations are baseless;

WHEREAS, to the extent that the City's ordinances would otherwise have precluded the foregoing arrangements, Ordinance No. 127-2013 was controlling and, to the extent necessary, partially repealed the earlier ordinances;

WHEREAS, to avoid any further dispute, Council wishes to expressly waive any conflicts or other restrictions on such arrangements;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL  
OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Council hereby waives any and all conflicts and other restrictions that would otherwise prohibit or make unlawful:

**EXHIBIT  
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- (a) The City from retaining Porter to represent the City in connection with the Litigation;
- (b) The City from appointing Margaret Koesel and Tracey Turnbull as Special Assistant Law Directors with respect to the Litigation;
- (c) The City from compensating Porter for representing the City at rates from time to time agreed upon by Porter and the City; or
- (d) Margaret Koesel and Tracey Turnbull from being members of and/or employed by and compensated by Porter with respect to the Litigation while also serving as Special Assistant Law Directors for the City.

Section No. 2: That to the extent, but only to the extent, other ordinances are in conflict with this Ordinance, they are repealed.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of allowing Porter and Margaret Koesel and Tracey Turnbull to continue to represent the City with respect to the Litigation. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 10/27/14

Martin E. Donnell  
President of Council

POSTED: 10/31/14

10/27/14

Approved

ATTEST: Barbara Dapp  
Clerk of Council

Murray Zilka  
Mayor

BY: Mr. O'Donnell

TEMP NO: 10409

ORDINANCE NO. 139-2014

AN ORDINANCE INTERPRETING THE OBLIGATIONS OF THE DIRECTOR OF LAW, AND DECLARING AN EMERGENCY.

WHEREAS, Section 37 of the Charter of the City establishes the duties of the Director of Law; and

WHEREAS, it has been suggested that Section 37 prohibits the Director of Law or any Assistant Director of Law from rendering legal services to or representing anyone other than the Municipality; and

WHEREAS, Section 71 of the Charter of the City vests in Council the power to interpret the various sections and parts of the Charter; and

WHEREAS, Council wishes to use such power to clarify that Section 37 of the Charter does not prohibit the Director of Law or any Assistant Director of Law from rendering legal services to or representing anyone other than the Municipality;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,  
STATE OF OHIO:

Section No. 1: That Council hereby determines that Section 37 of the Charter does not prohibit the Director of Law or any Assistant Director of Law from rendering legal services to or representing anyone other than the Municipality.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of clarifying a section of the Charter over which there is a dispute. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 10/27/14

Monte O'Donnell  
President of Council

POSTED: 10/31/14

10/27/14  
Approved

ATTEST:

Barbara Dapp  
Clerk of Council

Mary Zilka  
Mayor

EXHIBIT  
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