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April 21, 2020

Dear City Council Members:

I write today to inform each of you that you have no authority under the Warren City Charter to act on Agenda Item 6 of the Special Meeting scheduled for today, April 21, 2020, which states: *CONSIDERATION AND ADOPTION OF A RESOLUTION Declaring the Office of the City Attorney Vacant and Authorization to Hire Special Legal Counsel.*

First and foremost, the City Council does not have authority to declare the office of a confirmed City Attorney vacant nor appoint a new City Attorney. The Office of the City Attorney is defined as an “appointive office” under Charter §4.1(b). Accordingly, Mr. Vinson was appointed by the Mayor pursuant to Charter §7.6(a) which provides:

[T]he mayor shall appoint the appointive officers of the city, the directors of the departments of the city, and members of the commissions and boards of the city, whether the same be established by this charter, or by ordinance: Provided, however, that appointments to the offices of city attorney and assessor shall not be effective, until confirmed by the council.”

As you know, the prior City Council confirmed the appointment of Mr. Vinson. Therefore, the certification/disapproval/re-appointment process set forth in the balance of §7.6(a) was not utilized. Importantly, Mr. Vinson was not appointed for a specified or limited duration. The Charter does not limit the duration of his position either. Thus, the relevant Charter provisions provide:

Charter §4.4 – Terms of Office

- (b) Each appointive officer [] shall serve at the pleasure of the officer or authority appointing him...

Charter §4.12 – Removal of Officers

- (a) With the consent of the council, the mayor may remove any appointive officer whose appointment was required to be approved by the council...

Charter §7.6 – Administrative appointments

- (b) The appointive administrative officers, the director of any department or member of any commission or board of the city government, and such directors and members as are appointed by the mayor shall hold office at the discretion of the mayor...

You simply do not have authority to remove the City Attorney or declare this duly appointed and confirmed position vacant. That authority is vested only in my office.

Second, the Warren Charter does not vest City Council with the power to overtake the office or direct the daily activities of the City Attorney by appointment of “special counsel” or otherwise. While Charter §7.10 requires the City Attorney to “be directly responsible to the City Council,” it also provides that the City Attorney is the administrative head of the City’s Department of Law. Per §7.9 the City Attorney is vested with the power and duty to manage the Department of Law **subject only to the Mayor’s approval**. Specifically, the Charter states:

Charter §7.1 – Administrative Responsibility

The executive or administrative powers of the city, except as herein otherwise provided, are hereby vested in and shall be exercised by the mayor and the administrative officers, boards, and commissions prescribed or permitted to be created by charter.

Charter §7.9 – Departmental rules; appointing authority

...[T]he director, commission, or board in charge or each department of the city government shall formulate all rules and regulations required for the organization and conduct of his or its department and of the divisions under his or its jurisdiction which shall be approved by the mayor...

Any attempt by this Council to manage the affairs of the Department of Law would be a violation of the plain language of the Charter. To ensure this is clear, the City Charter limits the Council from conducting business with any appointive administrative officer or department of the City **except as through the Mayor** as follows:

Charter §5.5 – Restrictions of power of the council:

...Except in the course of an investigation, neither the council, nor any of its committees shall deal directly with any appointive administrative officer or department of the city, but shall conduct its affairs with such officers and departments through the mayor...

This limitation is imposed on City Council so that the appointive officers can efficiently run their departments on a day-to-day basis, subject to my approval given my full-time, daily presence and involvement. The Charter provisions must be respected to ensure the efficient functioning of our City government.

As such, it would be an express violation of the Charter for the Council to appoint “special counsel” as contemplated by today’s Agenda. Under §7.10(b) only the City Attorney has such authority, although his ability to do so is limited to “approval of such employment or retainer by the council.”

Third, your attempt to engage in such drastic but non-essential business in a Special Meeting during the Coronavirus pandemic when the public cannot attend exceeds the State of Michigan Governor’s Orders. This is compounded by the fact that no e-packet has even been made available for this Special Meeting. More specifically, the City Council may conduct business remotely under the designation of “essential” at this time but the State of Michigan, through Governor Whitmer and Attorney General Dana Nessel, has stated that an essential business designation is not to be interpreted as “business as usual.” Orders 2020-21 and -42, as well as directives and interpretations of both the Governor and the Attorney General, specifically set forth limits for those essential businesses and mandate that activities which are not “necessary to sustain or protect life must be suspended.” Action in furtherance of the Council Member’s apparent disdain for Mr. Vinson is plainly not necessary to sustain or protect life. You are required to sustain such matters indefinitely.

Finally, I implore you to recognize the Council’s legislative function under Section 6 of the Charter. It is your duty and obligation as Council Members to uphold the City Charter. **You are hereby on express notice that your proposed action on today’s Agenda violates the City Charter.**



Mayor James R. Fouts
City of Warren