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CITY OF WARREN
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Warren City Clerk

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April 24, 2020

Ms. Sonja Buffa
Warren City Clerk

**Re: Veto of Council Action; Special Meeting Tuesday, April 21, 2020
Agenda Item 5 - Appointment of Legal Affairs Standing Committee;
and Agenda item 6 - Consideration and Adoption of a Resolution
Declaring the Office of City Attorney Vacant and Authorization to
Hire Special Legal Counsel**

Dear Ms. Buffa:

Pursuant to Section 6.8 of the Warren City Charter, I veto all action taken by City Council on the above-noted agenda items.

In the midst of the coronavirus pandemic, when civic leaders should be focused on public safety, helping the vulnerable, equipping the front-line police and fire responders, Council held a special meeting to assert self-imposed power to vacate the office of City Attorney. Specifically, the City Council, with perhaps 18 hours' notice, held a Special Meeting for the sole purpose of clandestinely dismantling our governmental organization and humiliating City Attorney Ethan Vinson. Mr. Vinson is a respected attorney with 45 years' experience and an exemplary public officer who has faithfully served the City and its Council for over three years.

This was done with malice in a naked attempt to deny and disregard public access and input. In fact, the Council abruptly terminated the meeting while resident John Renaud was mid-sentence in his dissent after being informed that

many more residents were waiting in cue to express their opinions. Shockingly, the Council then reorganized on Zoom to vote with only a handful of residents being aware they did so. Adding insult to injury, the Council then censored this mere handful of residents by not allowing (at least) Jocelyn Howard and Christina Wright to speak. This appalling behavior against the residents of Warren is a flagrant violation of the Open Meetings Act, as modified by the Governor's Executive Order, and served to highlight the unlawful nature of the action being taken against our City Attorney at this secret meeting. All this was done in a non-essential, short-notice meeting instead of the regular Meeting set to occur a week later. A first-class coup, indeed.

Instead of working with Mr. Vinson as the City Charter directs, the City Council voted to form a committee to hire its own "special counsel," and excluded Mr. Vinson from future Council Meetings and from serving City Council. In doing so, Council President Pat Green suggested that their professional services contract was not subject to the City's Purchasing Ordinance.

In its ill-advised and unfortunate action, Council has defied City Charter as well as the Home Rule City Act, Act 279 of 1909 Governor Gretchen Whitmer's Executive Order, Open Meetings Act (OMA), Act 267 of 1976 as well as Council's Rules of Procedure and common standards of decency.

As Mayor, City Charter, section 7.3 endows me with the duty to see that all laws and ordinances are enforced within the city. Therefore, I am compelled to take any action necessary to challenge this action by our legislative body.

- 1) City Charter defines the role and responsibility of City Attorney not Council. Section 7.10 states the City Attorney "act(s) as legal advisor to the council and shall attend its meetings unless excused therefrom". Mr. Vinson has faithfully served council, attending every meeting of the current body and never asked to be excused nor has he sent one of his assistants. Council may not unilaterally defy Charter by removing him as its legal advisor or refusing his attendance at meetings as city attorney.
- 2) The City Attorney performs responsibilities that are at the helm of city business. Under charter section 7.10, the City Attorney prepares contracts, ordinances and other written instruments, advises our boards and commissions, and prosecutes and litigates for the city. Our Charter framers wisely included a dual role of the City Attorney to coordinate the interests of Council and the Administration. The City Attorney is in the position to develop contracts and other instruments to address the interests of both branches of our government. There is a reason Charter does not allow the Council to hire its own legal counsel. This would only create chaos, conflict, delay city business, and eliminate checks and balances inherent to our charter.

3) Council has no power to initiate removal of an appointed officer. Under Charter section 4.12, the mayor and not council has the authority to remove an officer even the officers confirmed by council. Unequivocally, Council's intent and subsequent action was to remove the City Attorney.

4) The action alters City Charter without a vote or petition of the public. Warren is a Home Rule City, authorized under the Michigan Constitution 1963, article 7, section 22, and is subject to the Home Rule City Act. Under the Home Rule City Act, a city charter amendment requires a ballot vote or petition of the electorate. Council negated significant sections of the Charter, without any regard for the public's rights or legal process.

5) The action did not comply with section 5.3(c) of Charter, which states that no business shall be transacted any special meeting of the council except that stated in the notice of the meeting. The agenda item did not correspond to the actual discussion and vote of Council. This deviation is not consistent with charter. Furthermore, Council's own rules, section 1.6 of the Council Rules of Procedure states the City Attorney or one of his assistants shall attend all meeting and hearings of the Council. Council voted that Mr. Vinson is not to attend the meetings without amending its own rules. These are technicalities, of course, yet noteworthy as procedural deficiencies and to demonstrate the overall rashness of the action.

6) Among the most astonishing aspects of the meeting is Council's apparent disregard for the City's Purchasing Ordinance. In fact, the Council President stated this professional service contract would not be subject to the purchasing ordinance, and that the committee would decide unilaterally to hire whatever attorney it wants.

7) Council's meeting violated the Open Meetings Act (OMA), Governor Whitmer Executive Order 20-48. The clear violation is the public comment requirement. The governor emphasized the right of the public during electronic meeting yet Council cut off most comments from the public. If there were technical difficulties, a simple recess of the meeting would be in order. Section 1(b) of Order 20-48 mandates that any meeting held electronically permit the public to hear other comments from the public. Public participation and access is not discretionary. No meeting should proceed unless the public has the right to speak or participate.

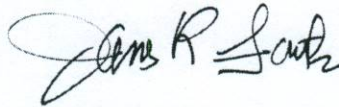
8) This meeting was held with less than one-day's notice. Even if the notice was on the City website for 18 hours, the notices must also comply with other posting provisions of the OMA. Not only was the notice to the public inadequate, Council gave Mr. Vinson NO notice. He found out about the meeting from me. During the meeting council did not allow the public to either see or hear Mr. Vinson, or allow him to assert his rights

under the OMA. It is disconcerting that the public did not have access to any materials on this item. The Executive Order encourages a public body to make its materials available to the public. Any action of this magnitude would certainly call for transparency to the public, and at a minimum, a copy of the proposed resolution under consideration.

In summary, I will not tolerate the targeting of a respected department head and public officer like Mr. Vinson who has a strong demeanor of professionalism and respect for others. He is a class act. Yet, City Council has treated him with disrespect, disdain and disregard. I am absolutely shocked by this not so subtle attempt to take over the City's Department of Law.

Likewise, I will not stand by for the dismantling of our City's form of government as defined by the Charter Commission. The system of checks and balances exists for a reason; this Council cannot avoid the system by hiring a "yes" man instead of following the Charter. Indeed, we are sworn by oath as public officers to uphold the law including the City's Charter. It is disturbing to have to remind the public officials on City Council of this oath when we officials should be occupied with aid for our residents and first responders in this time of public crisis.

Therefore, I veto Council's actions under Agenda Items 5 and 6 of the Special Meeting held on Tuesday, April 21, 2020. The operation of the Council action is suspended in accordance with City Charter section 6.8. The City Attorney will continue to perform and fulfill all of his responsibilities and duties.

A handwritten signature in black ink, appearing to read "James R. Fouts". The signature is stylized with a large, sweeping initial "J" and a long, horizontal flourish at the end.

James R. Fouts, Mayor
City of Warren

cc: City Council