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Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
August 4, 2020 14:19

By: CURT C. HARTMAN 0064242

Confirmation Nbr. 2044152

CITY OF GARFIELD HEIGHTS EX REL. FRANK
WAGNER

CV 20 935544

vs.

CITY OF GARFIELD HEIGHTS, ET AL.

Judge: NANCY R. MCDONNELL

Pages Filed: 32

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITY OF GARFIELD HEIGHTS *ex rel.*
FRANK WAGNER
c/o Curt C. Hartman, Legal Counsel
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230,

Relator,

v.

CITY OF GARFIELD HEIGHTS
c/o Timothy J. Riley
Law Director, City of Garfield Heights
5407 Turney Road
Garfield Heights, Ohio 44125,

and

VICTOR COLLOVA
5252 Evelyn Drive
Garfield Heights, Ohio 44125,

and

BARBARA BIRO
Director of Finance, City of Garfield Heights
5407 Turney Road
Garfield Heights, Ohio 44125,

Respondents.

: Case No. _____

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: Judge _____

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: COMPLAINT

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Now comes the CITY OF GARFIELD HEIGHTS, by and through Relator FRANK WAGNER as a taxpayer and resident of the CITY OF GARFIELD HEIGHTS, and for its Complaint brought pursuant to, *inter alia*, Revised Code § 733.56 *et seq.* alleges as follows:

INTRODUCTION

The CITY OF GARFIELD HEIGHTS, by and through Relator FRANK WAGNER as a taxpayer and resident of the CITY OF GARFIELD HEIGHTS, hereby seeks, generally speaking, *inter alia*: (i) a declaratory judgment relating to the provisions within Section 32 of the Charter of the City of Garfield Heights as it relates to the qualifications for one to serve as the Mayor of the City of Garfield Heights; (ii) the issuance of an injunction in order to restrain the abuse of corporate powers and/or the misapplication of municipal funds; and (iii) a declaratory judgment concerning whether the office of the Mayor of the City of Garfield Heights has become vacant pursuant to Section 32 of the Charter of the City of Garfield Heights.

PARTIES

1. Relator FRANK WAGNER is a resident and taxpayer of and within the CITY OF GARFIELD HEIGHTS.

2. Respondent CITY OF GARFIELD HEIGHTS is a municipal corporation in the State of Ohio and, as such, is a body corporate and politic, capable of being sued and organized and existing under Chapter 715 of the Revised Code.

3. Respondent VICTOR COLLOVA is a resident of the CITY OF GARFIELD HEIGHTS and, from 2009 to 2017, served as the *de jure* Mayor of the City of Garfield Heights. Since 2017 to the present, VICTOR COLLOVA has served only as the *de facto* Mayor of the City of Garfield Heights in light of him having engaged in conduct which has caused him to cease to possess all of the qualifications for the office of Mayor of the City of Garfield Heights and, accordingly, resulting in VICTOR COLLOVA having impliedly resigned or abandoned the *de jure* office of Mayor of the City of Garfield Heights.

4. Respondent BARBARA BIRO is a resident of the CITY OF GARFIELD HEIGHTS and presently serves as the Director of Finance of the City of Garfield Heights. Pursuant to Section 38 of the Charter of the City of Garfield Heights, the Director of Finance “shall have charge of the financial affairs of the City, including the keeping and supervision of all accounts; the custody and disbursement of City funds and moneys; the making and collection of special assessments, the issuance of licenses and the collecting of license fees; the control over expenditures; and such other duties as the Council may by ordinance require.”

STATEMENT OF FACTS

5. At the election occurring in November 2017, VICTOR COLLOVA was elected as Mayor of the City of Garfield Heights.

6. Pursuant to Section 32 of the Charter of the City of Garfield Heights, VICTOR COLLOVA commenced serving the present terms as Mayor of the City of Garfield Heights on December 1, 2017.

7. The Garfield Heights City Council held a regular meeting on December 11, 2017.

8. A true and accurate copy of the official minutes for the meeting of the Garfield Heights City Council held on December 11, 2017, *i.e.*, the *12/11/2017 Meeting Minutes*, as published on the website of the CITY OF GARFIELD HEIGHTS is attached hereto as *Exhibit A*.

9. At the meeting of the Garfield Heights City Council held on December 11, 2017, VICTOR COLLOVA presented to the City Council, *inter alia*, a proposed *Ordinance 78-2017*.

10. As indicated in the *12/11/2017 Meeting Minutes*, *Ordinance 78-2017* generally concerned the reinstatement of the position of Safety Director for the City of Garfield Heights.

11. Ultimately, at the meeting of the Garfield Heights City Council held on December 11, 2017, *Ordinance 78-2017* passed on a vote of 6-to-0.

12. A true and accurate copy of *Ordinance 78-2017* is attached hereto as *Exhibit B*.

13. In adopting *Ordinance 78-2017*, the Garfield Heights City Council: (i) repealed a prior ordinance which had abolished the position of Safety Director for the City of Garfield Heights; (ii) reinstated the position of Safety Director for the City of Garfield Heights; (iii) appointed VICTOR COLLOVA as Mayor of the City of Garfield Heights to the newly-reinstated position of Safety Director for the City of Garfield Heights; and (iv) established and authorized payment to VICTOR COLLOVA for serving in the newly-reinstated position of Safety Director for the City of Garfield Heights.

14. Pursuant to Section 19 of the Charter of the City of Garfield Heights, “[a]ny ordinance or resolution passed by the Council shall be signed by the President or other presiding officer and presented forthwith to the Mayor by the Clerk. If the Mayor approves such ordinance or resolution he shall sign it within ten (10) days after its passage or adoption by the Council....”

15. Following passage of *Ordinance 78-2017* and its signing by the President of the Garfield Heights City Council, *Ordinance 78-2017* was presented to and signed by VICTOR COLLOVA even though he had a personal interest in *Ordinance 78-2017*.

16. Pursuant to Section 20 of the Charter of the City of Garfield Heights, the Garfield Heights City Council has the power to fix the salary of compensation of all officers of the CITY OF GARFIELD HEIGHTS but the salary or compensation of any elected official (including the Mayor of the City of Garfield Heights) must be “fixed at least thirty (30) days prior to the filing date of nominating petitions for the terms beginning after the regular municipal elections for which such petitions were filed, and shall not thereafter be changed in any respect during any such term or any part thereof.”

17. Upon assuming the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, and continuing to the present day, VICTOR COLLOVA has received and is continuing to receive, pursuant to *Ordinance 78-2017*, a salary or compensation from the CITY OF GARFIELD HEIGHTS above and beyond the salary or compensation specifically provided for the Mayor of the City of Garfield Heights.

18. In fact, as noted on page 9 of the *12/11/2017 Meeting Minutes, i.e., Exhibit A*, several members of the Garfield Heights City Council specifically noted and supported VIC COLLOVA receiving additional salary or compensation as Safety Director for the City of Garfield Heights, above and beyond that provided to him as Mayor of the City of Garfield Heights.

19. Based upon information and belief, BARBARA BIRO, in her official capacity as Director of Finance of the City of Garfield Heights, has authorized and/or made payments to VICTOR COLLOVA above and beyond the salary or compensation specifically provided for the Mayor of the City of Garfield Heights by making, pursuant to *Ordinance 78-2017*, additional payments to VICTOR COLLOVA as Safety Director for the City of Garfield Heights.

20. Section 32 of the Charter of the City of Garfield Heights provides, in pertinent part:

The Mayor...shall not hold any other public office or public employment except that of Notary Public or a member of the State Militia, or the Reserve Corps of the United States or a member of various Boards and Commissions with the approval of Council, and shall not be interested in the profits or emoluments of any contract, job, work or service with or for the Municipality.... If the Mayor shall cease to possess any of these qualifications ..., his office shall immediately become vacant.

21. In assuming or accepting the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, and continuing to the present day, VICTOR

COLLOVA has violated the prohibition in Section 32 of the Charter of the City of Garfield Heights against the Mayor of the City of Garfield Heights from holding any other public office or public employment.

22. In assuming or accepting the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, VICTOR COLLOVA ceased to possess the qualifications in Section 32 of the Charter of the City of Garfield Heights for Mayor of the City of Garfield Heights.

23. In assuming or accepting the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, and continuing to the present day, and receiving additional compensation for that position, VICTOR COLLOVA has violated the prohibition in Section 32 of the Charter of the City of Garfield Heights against the Mayor of the City of Garfield Heights from being interested in the profits or emoluments of any contract, job, work or service with or for the CITY OF GARFIELD HEIGHTS.

24. In assuming or accepting the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, and continuing to the present day, and receiving additional compensation for that position, VICTOR COLLOVA ceased to possess the qualifications in Section 32 of the Charter of the City of Garfield Heights for Mayor of the City of Garfield Heights.

25. “The principle is firmly established that the acceptance by an officer of a second office which is incompatible with the one already held is a vacation of the original office and amounts to an implied resignation or abandonment of the same.” *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 707-08, 76 N.E.2d 886 (1947).

26. Through acceptance of the position of Safety Director of the City of Garfield Heights on or about December 11, 2017, VICTOR COLLOVA has impliedly resigned or abandoned the office of Mayor of the City of Garfield Heights.

27. Thus, from on or about December 11, 2017, VICTOR COLLOVA has ceased to be the *de jure* Mayor of the City of Garfield Heights.

28. “A *de jure* officer is one who occupies his office through a proper and legal election or appointment and during a constituted term.” *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 707, 76 N.E.2d 886 (1947).

29. Nonetheless, from on or about December 11, 2017, to the present, VICTOR COLLOVA has continued to function as the *de facto* Mayor of the City of Garfield Heights

30. “A *de facto* officer may be defined as one who, although not an officer in point of law, has the reputation of being the officer he assumes to be and is accepted as such by those who deal with him.” *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 708, 76 N.E.2d 886 (1947).

31. With VICTOR COLLOVA ceasing to be the *de jure* Mayor of the City of Garfield Heights, any future payments to VICTOR COLLOVA of salary or compensation as Mayor of the City of Garfield Heights are illegal and contrary to law.

32. With VICTOR COLLOVA ceasing to be the *de jure* Mayor of the City of Garfield Heights, any further actions or decrees of VICTOR COLLOVA as the *de facto* Mayor of the City of Garfield Heights constitute an abuse of corporate powers on behalf of the CITY OF GARFIELD HEIGHTS.

33. With VICTOR COLLOVA ceasing to be the *de jure* Mayor of the City of Garfield Heights, any future payments to VICTOR COLLOVA of salary or compensation as Mayor of the City of Garfield Heights constitutes an abuse of corporate powers.

34. With VICTOR COLLOVA ceasing to be the *de jure* Mayor of the City of Garfield Heights, any future payments to VICTOR COLLOVA of salary or compensation as Mayor of the City of Garfield Heights constitutes a misapplication of municipal funds.

35. In light of, *inter alia*, the foregoing, on June 25, 2020, and pursuant to Revised Code § 733.56 *et seq.*, counsel for and on behalf of FRANK WAGNER tendered a *Taxpayer Demand Letter* upon Timothy J. Riley, the Law Director for the CITY OF GARFIELD HEIGHTS, seeking, “pursuant to Sections 733.56 *et seq.* of the Ohio Revised Code,... to make application to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers and the misapplication of funds of the municipal corporation, to recover any funds already misapplied, to have the office of Mayor declared vacant, and to have any ensuing actions of Vic Collova under the claimed authority as Mayor declared null and void.”

36. A true and accurate of the *Taxpayer Demand Letter* is attached hereto as *Exhibit C*.

37. Timothy J. Riley, the Law Director of the City of Garfield Heights, responded to the *Taxpayer Demand Letter* on July 23, 2020, via the *Response to the Taxpayer Demand Letter*.

38. A true and accurate copy of the *Response to the Taxpayer Demand Letter* is attached hereto as *Exhibit D*.

39. As indicated in the *Response to the Taxpayer Demand Letter*, the Law Director of the City of Garfield Heights maintained that the Garfield Heights City Council did not have the legal authority to appoint VICTOR COLLOVA as the Safety Director for the City of Garfield

Heights and, therefore, VICTOR COLLOVA never held the public office of Safety Director for the City of Garfield Heights.

40. However, contrary to the assertion of the Law Director of the City of Garfield Heights in the *Response to the Taxpayer Demand Letter*, VICTOR COLLOVA assumed the public office of Safety Director for the City of Garfield Heights on or about December 11, 2017, and has continued to serve in that public office, as a *de facto* officer if not as a *de jure* officer.

41. One means by which one assumes a public officer as a *de facto* officer is “under color of a known election or appointment, void...because there was a want of power in the electing or appointing body..., such...want of power...being unknown to the public.” *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 708-09, 76 N.E.2d 886 (1947)(quoting *State v. Carroll*, 38 Conn. 449, 471 (1871)); accord *Norton v. Shelby County*, 118 U.S. 425, 446 (1886).

42. Thus, even if the Garfield Heights City Council lacked the legal authority to appoint VICTOR COLLOVA as the Safety Director for the City of Garfield Heights, VICTOR COLLOVA still assumed and exercised the public office as a *de facto* officer, including receiving compensation from the CITY OF GARFIELD HEIGHTS for exercising the public office of Safety Director for the City of Garfield Heights.

43. Notwithstanding the claimed lack of authority of the Garfield City Council to name VICTOR COLLOVA as the Safety Director for the City of Garfield Heights, VICTOR COLLOVA has collected monetary remuneration since December 11, 2017, beyond his set salary as Mayor since that time.

44. Thus, through assuming and exercising the position of Safety Director of the City of Garfield Heights, as a *de facto* officer on or about December 11, 2017, VICTOR COLLOVA has impliedly resigned or abandoned the office of Mayor of the City of Garfield Heights.

45. As the Director of Finance of the City of Garfield Heights, BARBARA BIRO is precluded from making any future payments to VICTOR COLLOVA of salary or compensation to VICTOR COLLOVA as Mayor of the City of Garfield Heights as VICTOR COLLOVA has ceased to serve as the *de jure* Mayor of the City of Garfield Heights.

46. In light of the filing of this Complaint, BARBARA BIRO has actual or constructive notice that VICTOR COLLOVA has ceased to serve as the *de jure* Mayor of the City of Garfield Heights and that any payment of salary or compensation to VICTOR COLLOVA as Mayor of the City of Garfield Heights is illegal, contrary to law, and constitutes an abuse of corporate powers and/or a misapplication of municipal funds.

47. As indicated in the *Response to the Demand Letter*, the Law Director of the City of Garfield Heights has refused to bring a lawsuit to enjoin the on-going abuse of corporate powers and/or the misapplication of municipal funds pursuant to Revised Code § 733.56 to address the abuse of corporate powers and the misapplication of municipal funds arising from the foregoing.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

48. The CITY OF GARFIELD HEIGHTS, by and through the Relator, restates and incorporates by reference all of the foregoing paragraphs as if fully restated.

49. A real and justiciable dispute exists between the parties regarding the rights, status, and other legal relations arising from the foregoing facts.

50. The CITY OF GARFIELD HEIGHTS, by and through the Relator, seeks a declaratory judgment regarding the rights, status and other legal relations of the parties herein as to it relates to Section 32 of the Charter of the City of Garfield Heights and, specifically, the qualifications for one to serve as the Mayor of the City of Garfield Heights and, in particular, the

qualifications of VICTOR COLLOVA to serve as the Mayor of the City of Garfield Heights while simultaneously assuming and exercising the *de jure* or *de facto* office of Safety Director for the City of Garfield Heights.

51. The CITY OF GARFIELD HEIGHTS, by and through the Relator, seeks a declaratory judgment regarding the rights, status and other legal relations of the parties herein as to it relates to Section 32 of the Charter of the City of Garfield Heights and, specifically, the qualifications for one to serve as the Mayor of the City of Garfield Heights and, in particular, the qualifications of VICTOR COLLOVA to serve as the Mayor of the City of Garfield Heights while simultaneously receiving from the CITY OF GARFIELD HEIGHTS payment and receipt for exercising the *de jure* or *de facto* office of Safety Director for the City of Garfield Heights.

52. The CITY OF GARFIELD HEIGHTS, by and through the Relator, seeks a declaratory judgment regarding the rights, status and other legal relations of the parties herein as to it relates to provisions within Section 32 of the Charter of the City of Garfield Heights and, specifically, the qualifications for one to serve as the Mayor of the City of Garfield Heights and, in particular, the implied resignation or abandonment of the public office of Mayor of the City of Garfield Heights by VICTOR COLLOVA upon his assumption and exercising the *de jure* or *de facto* office of Safety Director for the City of Garfield Heights.

**SECOND CAUSE OF ACTION
(Injunction)**

53. The CITY OF GARFIELD HEIGHTS, by and through the Relator, restates and incorporates by reference all of the foregoing paragraphs as if fully restated.

54. The CITY OF GARFIELD HEIGHTS, by and through the Relator, is entitled to the issuance of an injunction against and restraining the CITY OF GARFIELD HEIGHTS and BARBARA BIRO, the Director of Finance of the City of Garfield Heights, or those acting at

their behest or direction, from executing or performing any other acts whatsoever of providing payment to VICTOR COLLOVA upon a claim of VICTOR COLLOVA of entitlement to payment arising from his service as Mayor of the City of Garfield Heights as VICTOR COLLOVA has impliedly resigned or abandoned the public office of Mayor of the City of Garfield Heights by VICTOR COLLOVA upon him assuming and exercising the *de jure* or *de facto* office of Safety Director for the City of Garfield Heights.

55. The CITY OF GARFIELD HEIGHTS, by and through the Relator, is entitled to the issuance of an injunction against and restraining VICTOR COLLOVA from undertaking any act under the purported authority of being the Mayor of the City of Garfield Heights.

WHEREFORE, the CITY OF GARFIELD HEIGHTS, by and through the Relator, prays for the entry of judgment in its favor and against Respondents granting the declaratory judgment and injunctive relief sought in the preceding paragraphs (or as otherwise established or warranted), together with court costs, attorney fees, as well as such other relief to which the CITY OF GARFIELD HEIGHTS, by and through the Relator, may be entitled in law or in equity.

Respectfully submitted,

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**MINUTES OF A REGULAR MEETING OF COUNCIL
CITY OF GARFIELD HEIGHTS, OHIO**

Monday, December 11, 2017

MEETING CALLED TO ORDER AT 7:00 p.m. by Council President Matthew Burke.

INVOCATION BY: Councilman Thomas Vaughn

PRESIDENT BURKE: Ms. Molin, will you please take the roll call.

ROLL CALL: **PRESENT:** Council Members Dudley, LaMalfa, Glenn, Suster, Burke, Vaughn

EXCUSED: Nenadovich

PRESIDENT BURKE: At this time, I would like to make a motion that we excuse Clmn Nenadovich tonight. He had a personal matter to attend to and he cannot be here. All in favor of this motion.

CLMN GLENN: Point of Order. First, what does a personal?

PRESIDENT BURKE: I believe he's got some medical issues with his family.

CLMN GLENN: Very good. Thank you.

PRESIDENT BURKE: Thank you. On the motion set before us, all in favor signify by saying Yea. Any opposed?

AYES: Burke, Vaughn, Dudley, LaMalfa, Glenn, Suster

ABSENT: Nenadovich

OK. Mr. Nenadovich is excused from tonight's meeting.

READING AND DISPOSAL OF MINUTES:

PRESIDENT BURKE: Let's move on to the Reading and Disposal of Minutes.

CLMN SUSTER: Mr. Chairman, I would like to make a motion that we accept the Minutes of the city of Garfield Heights Regular Meeting of City Council for Monday, November 27, 2017 as written.

Exhibit A

PRESIDENT BURKE: On the motion made by Clmn Suster to accept the Minutes of the Regular Meeting of Council for the city of Garfield Heights for Monday, November 27, 2017 as written, all in favor signify by saying Yea. Any opposed?

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn

ABSENT: Nenadovich

That passes. Six Yes votes.

WRITTEN COMMUNICATIONS TO COUNCIL: None.

COMMITTEE REPORTS: None.

REPORTS OF THE MAYOR AND DIRECTORS:

PRESIDENT BURKE: We will move on to Reports of the Mayor and Directors. Mayor Collova, do you have a report for us this evening?

MAYOR VIC COLLOVA: Thank you, Mr. Chairman. Yes, I do. I have a short report tonight. I'm going to start off tonight with the legislation. Ordinance 74 incorporates the new tax mandates that have been adopted by the State. Ordinance 77 enforces the language that only homeowners do not need a permit to do work on their homes. Ordinance 78 is in regard to the Safety Director's position. Ordinance 79 is in regard to the continuing local collection of municipal income tax—not State collection. Ordinance 80. An ordinance to go out for bids for self-contained breathing apparatus. Ordinance 81 authorizes our Engineer Dave Krock to prepare the plans for the Midwest Sewer Program. Ordinance 82 and 83 are in regards to our final appropriations for 2017 and 2018. I'm sure Finance Director Barb Biro will get into that shortly.

As far as my personal report today, the only thing that I have is I want to wish everyone here, all of Council, all the Directors, all the residents, a very Merry Christmas, a very Happy New Year. I think 2018 with the Bridgeview Projects and the City View Projects on the move, I think it's going to be a very exciting and prosperous 2018 for the city of Garfield Heights. I'm looking forward to it. With that, Mr. Chairman, you have my report.

PRESIDENT BURKE: Thank you, Mayor. Does anyone have a question on the Mayor's report? Mr. Suster.

CLMN SUSTER: Mayor, you had mentioned Bridgeview. Do you know when they're going to start? Or do you have anything that you can tell us more about it? Or not?

MAYOR VIC COLLOVA: There's still a confidentiality regarding the whole project, but all indications are that some exciting news is in the very near future. I can tell you this. That the widening of the bridge goes out for bid on January 15th. I think that bid will be awarded February 5, 2018. That job is to be completed by the end of October 2018. Remember the reason they're widening that bridge and widening the ramps is for that Bridgeview Project to allow for the overflow of traffic or to stop the overflow of traffic back down the ramps on to the freeway. Obviously, somebody knows something big's coming to Garfield Heights. They probably know more than we do, Joe, but something's happening. Something's definitely in the works.

CLMN SUSTER: Thank you, Mayor.

PRESIDENT BURKE: Does anyone else have any questions for the Mayor on his report?

CLMN DUDLEY: Hey, I got a question, Mayor. When I drive around you go through all the other cities to see what they doing for us. When you pass through other cities and they have like the main bridge which is a transportation bridge and see if they can put the words Garfield Heights on it. Like when you go down 77, you pass through all the cities that always had a name of the city that you're passing through somehow embroidered on the bridge or something. Just a food for thought, Mayor.

MAYOR VIC COLLOVA: I think that's an excellent idea, Mike.

CLMN DUDLEY: Thank you, Mr. Chairman.

PRESIDENT BURKE: Does anyone else have any questions for the Mayor on his report this evening? If there are none we'll move on to our Law Director Tim Riley. Tim, do you have a report for us this evening?

LAW DIRECTOR TIM RILEY: No report tonight, Mr. Chairman. Thank you.

PRESIDENT BURKE: Thank you. We'll move on to our Police Chief Robert Byrne. Chief Byrne, do you have a report for us this evening?

POLICE CHIEF ROBERT BYRNE: Yes, I do, Mr. Chairman. Thank you. First off I just wanted to give a quick warning that once again we're experiencing a lot of theft from autos and vehicles being broken into really throughout the city. The best advice I could give is to take your valuables out of your cars. They are now forcing entry into these vehicles. We have the most success when people call us immediately. We have made a couple arrests but it just seems like there's enough knuckleheads out there to replace the ones we're arresting so if you see something in your yard or you hear something. Like I said somebody going through the yard or your neighbor's yard, please call us immediately. Call 9-1-1. If you can stay on the line and watch where the people are going, what they're wearing, it's extremely helpful to us. Like I said we have had a little bit of success when we work with each other. It's really a partnership between the community and the police. That's typically how we get these people, so if you see something going on at night, give us a call.

On a little more positive note, on Saturday we were able to send 20 local kids to go shopping with a cop. We've been doing this for quite a while. I wanted to take an opportunity to thank the community for your donations and purchasing tickets. I wanted to thank our guys, our Auxiliary officers, community volunteers, some of the teachers that went. It was a great success. I especially wanted to thank Officer John Marks. He's the liaison between F.O.P. and the Garfield Heights Police Department. He does a lot of work. I think he starts in end of October to get this thing rolling. He does a good job with it.

He also wanted me to pass along that the kids that went this year were very polite. They were very thankful. Their families were very appreciative to the community for those donations. So thank you very much and with that, you have my report.

PRESIDENT BURKE: Thank you, Chief Byrne. Does anyone have any questions for Chief Byrne on his report this evening? There are none. Then we'll move on to our Service Director Tim McLaughlin. Tim, do you have a report for us this evening?

SERVICE DEPARTMENT DIRECTOR TIM McLAUGHLIN: Yes, I do. Thank you, Mr. President. The leaf program is over with for this year. Today I went out and tried to get a few

piles. Was half-way decent but we're done and the machines (a lot of them) broke down again. That's already sidelined but if there's any leaves out there by December 11th those that didn't rake them. I think bags are better because recently some of them put them in their garbage cans and they froze solid in the cans so we had problems with the rubbish truck if they banged them too hard they were going to split the cans so they called and I mean it was just a different kind of leaf season. We didn't start till really late. We did wind up going through the city four times. We did end up doing overtime trying to catch up. I think that a large portion that are out there are picked up.

The other thing I have is hopefully we've gone through everything and we'll be ready for the snow. That's all I have.

PRESIDENT BURKE: Thank you. Does anybody have any questions of Tim on his report this evening? Mr. Vaughn.

CLMN VAUGHN: Tim, I want to thank your guys for the great job they did. Especially going out up on Miles Circle and cleaning up the problem that exists up there. Those old oak trees will still hold their leaves probably. The majority of them did get picked up and they did a great job, so thank you.

PRESIDENT BURKE: Does anyone else have any questions on Tim's report? If there are none, we'll move on to our Parks and Recreation Director, Mr. Robert Dobies. Robert do you have a report for us this evening?

PARKS AND RECREATION DIRECTOR BOB DOBIES: I do. Mr. President and Council Members, good evening. First off our 21st Annual Skating Recital this past Saturday was a great success. Over 170 guests came out to watch our many figure skaters perform their routines. This is a benchmark on their seasons gearing toward the April Annual Ice Show. Thank you all for your support.

Second, futsal signups or indoor soccer program began today. The signups will run to Monday January 8th. This is a co-ed program for those 5 – 14 years old. Runs from mid-January through March. The program is held at Garfield Heights Middle School.

Next, I remind all that our Annual Skate with Santa is this Sunday the 17th from 3:00 – 5:15 p.m. This event is for residents. Come have a fun afternoon. Meet Santa. We'll have music. Children will get a gift and children under 12 must be accompanied by their parents.

Last, I have the Annual Overview on the Summer Grass Program. All Council was given a report containing the properties in their respective Wards for the 7 cuts during this season. This gives you an overview of when we were through the Wards, how many properties were cut off the Master List, how many were cut by our crews and how many were cut by residents or outside companies maintaining the properties along with the days and average cuts per day.

The next sheet you're given is a recap of other Wards. You may wish to review and see how your individual Ward compares against other Wards in the city.

The last sheet shows the overall totals of the last six seasons that the program has been in gear for the comparisons. As usual, we began the season at the end of March with posting vacant properties and ended up the season on November 9th.

We began the season with 540 properties on the Master List and ended up with 1,046 on the list. During the season, the crews checked 5,789 properties that go through the seven cuts. That's what those 1,000 properties turned into because in a sense they are not taken off the list, but they are checked every time when we go through each respective Ward. We cut 1,958 properties or 34% of the total properties. That's 14% more than last year. Three thousand eight hundred and twenty four properties were maintained by the owners or approximately 66%. This is 16% less than last season. So you see the variance there. We went up a little bit. Even though we had less properties, we cut a few more and the owners cut a few less. The average cut basically remains about the same over the six years. We cut about a third of the properties that we have on the Master List and the other 66% are maintained.

We continue to have owners calling the Building Department to inform the department of the new status of the property or they will have someone maintain. This year after the initial posting approximately 70 persons called. That's what you need to do—if there's a change in the property. That's about 12% of the original list or if we used the 1,000 figure that's about 5%. So sometimes there's many more out there. There may be a change or somebody purchases a property, Building doesn't know, the grass crew doesn't know. We need to know that. County records are not updated so if there is anything that happens in that regard where property changes we need to know the status of it.

Would that happen again this season and will continue to happen as we've been digging deeper to research properties through the County Web to find ownership, either a posting will occur or a formal letter will be sent reminding them of their obligations of neglected properties. Once this is accomplished, either we will resolve and being the property's maintained or we will maintain it and bill accordingly.

That concludes my report. I, too, would like to wish all a Merry Christmas and a Happy New Year. Thank you for your generosity this night. Thank you. That concludes my report.

PRESIDENT BURKE: Thank you, Mr. Dobies. Does anyone have any questions of Bob on his report this evening? Does anyone have any questions of Bob on his report this evening? If not, we'll move on to our City Engineer. Sitting in for David Krock this evening is Jim Sickels. Jim, do you have a report for us?

CITY ENGINEER JIM SICKELS: I do. Thank you. The Mayor already mentioned the Granger Transportation Project. I'll move on to Ordinance 81. I do ask for your support for that one. Multi-Street Reconstruction Phase 3. The contractor finished up Hillside. They have the water main completed on that. They are currently working on Maplerow. For the Midwest Sewer Project the contractor mobilized this week. You will start seeing a little bit of activity on that project. That's East 102nd Street. That concludes my report.

PRESIDENT BURKE: OK. Do we have any questions of Mr. Sickels on the report this evening? Does anybody have a question?

CLMN GLENN: Not a question, but a comment. The 102nd Street residents will be very, very happy. The Midwestern Project took a long process, a lot of money with the leadership of the Mayor, Dave Krock, you guys done an excellent job. Not to mention all the grant money we received too. Thank you.

PRESIDENT BURKE: Thank you. Does anyone have any questions of Mr. Sickels on his report this evening? OK. We will move on to our Finance Director, Ms. Barb Biro. Barb, do you have a report for us this evening?

FINANCE DIRECTOR BARBARA BIRO: Yes, I do, Mr. President. Thank you. This evening we are asking for support for the Third Reading of Ordinance 74 in order to update the city's Municipal Income Tax Chapter. We are asking for Council's support on Ordinance 79. We're asking to authorize the Mayor to engage the firm of Walter Haverfield. They are being hired by the Regional Income Tax Agency and many other municipalities are joining in to initiate litigation in regards to the current House Bill 49 that instituted the collection of business profits tax at the State Level. They will be getting together to initiate litigation under the constitutionality of that.

Ordinance 80. We are asking for support to begin the process of going out for SCVAs, which we have received FEMA money for and also the help of Cuyahoga County and at the end there will not be a cost to the city of Garfield Heights for the self-contained breathing apparatuses for our firemen. We are asking also for Ordinance 81 in regards to the Midwest Neighborhood Project Phase 1. Ordinance 82 is the final appropriation measure to close out the year 2017. We are asking for support of Ordinance 83 to make appropriations for the year 2018 and that is my report, Mr. President.

PRESIDENT BURKE: Thank you, Ms. Biro. Does anyone have a question for Barb on her report this evening?

CLMN DUDLEY: Thank you, Mr. Chairman. Barb, could you let everybody know that that 79-2017 is going to be no cost to us in the city?

FINANCE DIRECTOR BARBARA BIRO: That is correct. It is no cost. The litigation cost is being picked up by the Regional Income Tax Agency on behalf of the participating municipalities.

CLMN DUDLEY: Thank you, Barb. Thank you, Mr. Chairman.

PRESIDENT BURKE: Does anyone have any questions of Barb on her report? If not, we will move on to our Social Services Director Kathy Rush-Parsson. Kathy, do you have anything for us this evening?

SOCIAL SERVICES DIRECTOR KATHY RUSH-PARSSON: Yes, I do. Thank you. We had another busy food bank distribution for Thanksgiving again this year. I would like to take the opportunity to extend my gratitude to the numerous businesses, organizations and individuals who again donated everything from food items, turkeys, money and gift cards to the Food Pantry Program. All of the following either made food or monetary donations:

Systems Seals
Johnson Dance & Gymnastics
Elmwood School
Maple Leaf Elementary
Garfield Heights United
St. John Lutheran Church
Siemens
Allstate Insurance Company
Nova Care

Overdrive
Garfield Heights United Methodist Church
The Family of Kathryn Van Bolt
1-888-ohiocomp for their generous donations of 200 turkeys again this year.

I'd also like to thank Vince Liotta and our Court Community Service crew for all their assistance with picking up food, unloading, assisting clients, carrying the bags of groceries to their cars, separating and organizing all of the donations. Vince and I sat down last week and we figured it out and his crew contributed a total of 90 man-hours in service directly related to the Food Pantry Program. So I do want to acknowledge that. I'd also like to thank the Service Department for all their help. They love turkey and Thanksgiving time, but they were a big help, as always. So I just wanted to, on behalf of the city, acknowledge all of those organizations and businesses and thank them again for their contributions. That's all I have.

PRESIDENT BURKE: Thank you, Ms. Parsson. Does anyone have any questions for Kathy on her report this evening? If not, then we will move on to our Economic Development Director, Noreen Kuban.

ECONOMIC DEVELOPMENT DIRECTOR NOREEN KUBAN: Thank you, Mr. President. I have no report this evening.

PRESIDENT BURKE: Thank you. We will move on to our Building Commissioner Mr. Mark Moro.

BUILDING COMMISSIONER MARK MORO: Thank you. I'd appreciate the consideration on Ordinance 77. I apologize for not coming down for Caucus. I just didn't think about it, but if you have any questions in regards to this ordinance and how it may affect anybody involved, please give me a call. I'd be happy to explain it to you.

I'd also like to thank everyone for these lovely gifts.

PRESIDENT BURKE: Does anyone have any questions for Mr. Moro on his report this evening? Does anyone have any questions for Mr. Moro on his report this evening? If not we will move on to Communications from Citizens on Tonight's Agenda. Would the Clerk please read the rules.

COMMENTS BY CITIZENS ON THE AGENDA:

CLERK: Comments shall be strictly limited to brief statements not to exceed five minutes with comments limited to legislation on the current evening's agenda. No citizen shall speak more than once.

PRESIDENT BURKE: Is there anyone wishing to comment on tonight's agenda? If not, then we will move on to Ordinances and Resolutions beginning with Ordinance 74-2017. Will the Clerk please read the title?

ORDINANCES AND RESOLUTIONS:

ORDINANCE NO. 74-2017

AN ORDINANCE AMENDING CHAPTER 183 OF THE CODIFIED ORDINANCES OF THE CITY OF GARFIELD HEIGHTS REGARDING MUNICIPAL INCOME TAX.

Moved by SUSTER to CONSIDER BY TITLE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn

ABSENT: Nenadovich

PRESIDENT BURKE: Because this is the Third Reading, I would like to go ahead and take a roll call vote at this time.

VOTE ON ADOPTION:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn

ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance number 74-2017 passes with 6 Yes votes.

ORDINANCE NO. 77-2017

AN EMERGENCY ORDINANCE AMENDING SECTION 1309.07 OF THE GARFIELD HEIGHTS CODIFIED ORDINANCES RELATING TO REGISTERED CONTRACTORS PERFORMING WORK WITHIN THE CITY OF GARFIELD HEIGHTS.

Moved by DUDLEY to CONSIDER BY TITLE:

AYES: Dudley, LaMalfa, Glenn, Suster, Burke, Vaughn

ABSENT: Nenadovich

CLMN DUDLEY: I'd like to make a motion that we move to pass this at a Second Reading.

Motion to PASS ON THE SECOND READING:

AYES: Dudley, LaMalfa, Glenn, Suster, Burke, Vaughn

ABSENT: Nenadovich

LAW DIRECTOR TIM RILEY: Point of Order. You would need to pass this on a First Reading to get to a Second Reading.

PRESIDENT BURKE: Is that the motion you were making, Mr. Dudley?

CLMN DUDLEY: Yeah. I'm making a motion that we pass that it would pass on the second reading motion to pass when I meant to make a motion that we going to pass on a second reading and read the first reading. That it wouldn't be passed tonight. We'd just go through and pass it tonight. We don't want to pass it tonight. So wouldn't it be making a motion that we pass at a second reading so people don't think that it been passed tonight?

LAW DIRECTOR TIM RILEY: We would pass it for a second reading.

CLMN DUDLEY: Pass it for a second reading?

LAW DIRECTOR TIM RILEY: Yes.

CLMN DUDLEY: OK.

PRESIDENT BURKE: On the motion made by Clmn Dudley to pass for a second reading, all in favor signify by saying Yea. Any opposed?

AYES: Dudley, LaMalfa, Glenn, Suster, Burke, Vaughn

ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance 77-2017 will be read a second time at our next Council Meeting.

ORDINANCE NO. 78-2017

AN EMERGENCY ORDINANCE REPEALING GARFIELD HEIGHTS ORDINANCE 69-1990, REINSTATING THE POSITION OF SAFETY DIRECTOR.

Moved by VAUGHN to CONSIDER BY TITLE:

AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke

ABSENT: Nenadovich

Motion to WAIVE RULE 24:

AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke

ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:

AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke

ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Vaughn.

VOTE ON ADOPTION:

CLMN VAUGHN: Before I vote, I wanted to say one thing. I really think it's time that we reinstate this. The Mayor puts in a lot of time serving as Safety Director and Mayor. It's time that he be compensated for what he does as Safety Director. It also entitles whoever comes along after our Mayor or whoever the Safety Director is to have this position. So with that, I vote Yes.

CLMN DUDLEY: Before I vote, you know, you was already doing the job anyway. We got to say that. You could have chosen anything, but you chose the minimum part you know. That shows where your heart is. With that, I vote Yes.

CLMN LAMALFA: I'd like to say that anybody could lead in good times, but it takes a real leader to lead in bad times. I vote Yes.

CLMN GLENN: Before I vote, I'd like to say that Mayor Collova when he took office eight years ago at a pay decrease for eight years this man has taken upon himself to lead the city out of bankruptcy, showing the way by example. He did not ask for a pay raise and eight years later merits a well deserved pay raise. You are just in line with other cities, but it's something for you. Thank you. I vote Yes.

CLMN SUSTER: I concur with the rest of the Members of Council. I vote Yes.

PRESIDENT BURKE: I also agree with the rest of Council here and I, too, vote Yes.

AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke

ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance 78-2017 has been adopted with 6 Yes votes.

ORDINANCE NO. 79-2017

AN EMERGENCY ORDINANCE TO AUTHORIZE THE MAYOR TO ENGAGE THE LAW FIRM OF WALTER/HAVERFIELD JOINTLY WITH THE REGIONAL INCOME TAX AGENCY AND OTHER MUNICIPALITIES FOR PURPOSES OF INITIATING LITIGATION TO CHALLENGE THE CONSTITUTIONALITY OF AMENDMENTS TO CHAPTER 718 OF THE OHIO REVISED CODE RELATING TO MUNICIPAL INCOME TAX.

Moved by SUSTER to CONSIDER BY TITLE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn

ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:
AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Suster.
VOTE ON ADOPTION:
AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich
PRESIDENT BURKE: Ordinance 79-2017 passes with 6 Yes votes.

ORDINANCE NO. 80-2017

AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING MAYOR, OR HIS DESIGNEE, TO PREPARE THE NECESSARY PLANS AND SPECIFICATIONS, AND TO GO OUT FOR COMPETATIVE BIDS, FOR SELF-CONTAINED BREATHING APPARATUSES ("SCBA").

Moved by VAUGHN to CONSIDER BY TITLE:
AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke
ABSENT: Nenadovich

Motion to WAIVE RULE 24:
AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke
ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:
AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke
ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Vaughn.
VOTE ON ADOPTION:
AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke
ABSENT: Nenadovich
PRESIDENT BURKE: Ordinance 80-2017 passes with 6 Yes votes.

ORDINANCE NO. 81-2017

AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING DAVID KROCK, CITY ENGINEER, TO PREPARE THE NECESSARY PLANS AND SPECIFICATIONS, PER THE OHM ADVISORS PROPOSAL, FOR THE MIDWEST NEIGHBORHOOD STORM/SANITARY SEWER SYSTEM RECONSTRUCTION PROJECT – PHASE 1, AND AUTHORIZING PAYMENT OF COSTS THRU FUNDING BY THE NEORSD MCIP AND THE NEORSD/COMMUNITY COST SHARE PROGRAM (2018-2019 FUNDS).

Moved by GLENN to CONSIDER BY TITLE:
AYES: Glenn, Suster, Burke, Vaughn, Dudley, LaMalfa
ABSENT: Nenadovich

Motion to WAIVE RULE 24:
AYES: Glenn, Suster, Burke, Vaughn, Dudley, LaMalfa
ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:

AYES: Glenn, Suster, Burke, Vaughn, Dudley, LaMalfa
ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Glenn.

VOTE ON ADOPTION:

CLMN GLENN: Before I vote, I just want to say to the residents on 102nd Street the project has begun. They were out today cutting trees down. So this is a long overdue flooding problem. With that Mr. President, I vote Yes.

AYES: Glenn, Suster, Burke, Vaughn, Dudley, LaMalfa
ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance 81-2017 passes with 6 Yes votes.

ORDINANCE NO. 82-2017

AN EMERGENCY ORDINANCE TO MAKE FINAL APPROPRIATIONS FOR CURRENT EXPENDITURES FOR THE CITY OF GARFIELD HEIGHTS, OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2017.

Moved by SUSTER to CONSIDER BY TITLE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

Motion to WAIVE RULE 24:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Suster.

VOTE ON ADOPTION:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance 82-2017 passes with 6 Yes votes.

ORDINANCE NO. 83-2017

AN EMERGENCY ORDINANCE TO MAKE FINAL APPROPRIATIONS FOR CURRENT EXPENDITURES FOR THE CITY OF GARFIELD HEIGHTS, OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2018.

Moved by SUSTER to CONSIDER BY TITLE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

Motion to WAIVE RULE 24:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

Motion to SUSPEND THREE READING RULE:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn
ABSENT: Nenadovich

PRESIDENT BURKE: On its adoption, beginning with Clmn Suster.

VOTE ON ADOPTION:

AYES: Suster, Burke, Vaughn, Dudley, LaMalfa, Glenn

ABSENT: Nenadovich

PRESIDENT BURKE: Ordinance 83-2017 passes with 6 Yes votes. That concludes our Ordinances and Resolutions for this evening.

MISCELLANEOUS COMMENTS BY CITIZENS

PRESIDENT BURKE: We will move on to Comments by Citizens. Would the Clerk please read the rules.

CLERK: Comments shall be restricted to any problem a citizen has which has previously been submitted to his/her Councilperson or to the city hall department directly involved. If submission of a problem to a city hall department or a Councilperson is made and there is a lack of service rendered in this regard, the problem may then be presented during Comments from Citizens at a future meeting. It is the intention of this rule that no request of a first nature is presented on the floor at this time. Comments shall be limited to five minutes. No citizen shall be heard more than once.

PRESIDENT BURKE: Is there anyone wishing to speak this evening?

MISCELLANEOUS BUSINESS:

PRESIDENT BURKE: If not, we'll move on to Miscellaneous Business.

CLMN VAUGHN: At this time, I would like to make a motion please to suspend our Council Meeting for December 27, 2017. We have wrapped up all the business for this year. If there is something that comes up, we will call a Special Meeting if needed.

PRESIDENT BURKE: On the motion made by Clmn Vaughn to cancel the Meeting on December 27, 2017 due to no agenda. If an agenda arises we will have a Special Council Meeting, all in favor signify by saying Yea.

CLMN VAUGHN: Point of Order. I think we should take a roll call on that please.

PRESIDENT BURKE: Barb, can you take a roll call vote on that.

CLMN DUDLEY: Yes. I agree with you 100% if needed. Thank you, Mr. Chairman. I vote Yes.

CLMN GLENN: Before I vote, because of the special holidays and in between Christmas and New Year's and the activities are kind of minimal at best, I vote Yes.

AYES: Vaughn, Dudley, LaMalfa, Glenn, Suster, Burke

ABSENT: Nenadovich

PRESIDENT BURKE: OK. So our meeting on December 27th will be canceled. Then if there's anything that should arise we will call a Special Meeting. Thank you, Mr. Vaughn. We will move on now to our Miscellaneous Business beginning with Clmn Vaughn.

CLMN VAUGHN: Why thank you, Sir. Back to me. I just want to take this time first of all to invite everybody to Ward 7's Block Watch, which will be on December 28th at 7:00 p.m. in the basement of the school at St. Monica's. We're just going to have our annual Christmas party,

but come on up and join us. There will be plenty of food and a good time to just talk and relax as we prepare to go into the next year.

I want to wish everybody a Merry Christmas, a Happy New Year. Enjoy your family. Take it slow. It's a crazy world out there, with what happened today and everything else that's been going on. Do what's important. Stay with your family. With that, that's all I have Sir.

PRESIDENT BURKE: Thank you, Mr. Vaughn. Mr. Dudley.

CLMN DUDLEY: I don't know if I can follow such talent. First of all, I want to say thanks to the Shop a Cop Program. They do a great job of getting toys out. A lot of them kids that's the only toys or gifts they will get for Christmas. Nothing stops anybody else sometime when you know a kid who's a good kid and has nothing coming for the holiday season. See if you can't provide him with a toy or scarf or gloves or something just to give him a gift for the holiday season.

I'd also like to take a minute to thank Clmn Vaughn. He volunteered to donate a turkey to our Annual St. Timothy's St. Manor's Park residents. That's about 80 residents. We give them a Christmas dinner every year. We've been doing that for like the last 10 years or so.

CLMN VAUGHN: When do you need that by?

CLMN DUDLEY: Wednesday is good. Appreciate that.

I'd like to thank everybody for the gifts and the cards up here and I'd like to thank all of you all you know, that take the moment to come throughout the year to come to these meetings. Also, I wish the Neighborhood News a Merry Christmas because they always show up. So the Neighborhood News I wish you all a Merry Christmas to your families there.

I wish you guys a Merry Christmas and we got a New Year upon us. Remember we got that holiday coming up that's called New Year's. Be careful and watch out for them individuals who still continue to get behind the wheel. Happy holidays to you all and a safe New Year. I'll see you all in about a year. Thank you, Mr. Chairman.

PRESIDENT BURKE: Thank you. Mr. LaMalfa, do you have anything for us this evening?

CLMN LAMALFA: I just want to wish everybody a Merry Christmas and a Happy New Year.

PRESIDENT BURKE: Thank you. Mr. Glenn?

CLMN GLENN: Thank you, Mr. President. A couple things here. Again, I want to tell the people on 102nd Street the project has started.

I want to make special note of the fact that the Building Department that whole parking area by Save-a-Lot back there is all cleaned up. It's looking really, really nice. This goes to a large part of the new employee at the Building Department. I want to give a big thank you to Janice Tubbs. She is also working on Turneytown. It's starting to get cleaned up. It's starting to look a lot better. There's a couple issues we still are working on.

At this time, I would like to mention about freedom of speech. Freedom of speech is the First Amendment, right, as is Freedom of Religion. The Bill of Rights applies to all people—young and adults. There are responsibilities with Freedom of Speech and Freedom of Religion. You

cannot holler fire at a movie theater. When you're in school you have Freedom of Speech, but there are restrictions so you don't do destructive activities. The public schools are run by the government as this chamber conference is run by the city of Garfield so all the rules. I may repeat the rules of Freedom of Speech and Freedom of Religion do apply here.

With that, I wish everybody a Merry Christmas and a Happy New Year.

At this time, I normally don't talk too long. With the permission of Council, I would like to say a prayer.

PRESIDENT BURKE: You have the floor, Mr. Glenn.

CLMN GLENN: Pardon me?

PRESIDENT BURKE: You have your time, Mr. Glenn.

CLMN GLENN: This here prayer is dedicated to all the members of Service that are overseas. If you have time. If you know somebody in Service I can guarantee you a little thank you—a little Christmas card—goes a long way. With this here, I am going to say a prayer that's called "A Final Inspection". This applies to any military person that is overseas. This is especially designated to the Marine Corp.

"The Marine stood and faced God which must always come to pass
He hoped his shoes were shining just as brightly as his brass.
"Step forward Marine, How shall I deal with you?
Have you always turned the other cheek? To My Church have you always been true?"
The Marine squared his shoulders and said, "No, Lord, I guess I ain't
Because those of us who carry guns can't always be a saint.
I've had to work hard most Sundays and at times, I talked very tough,
And sometimes I've been violent, because the world is awfully rough.
But, I never took a penny that wasn't mine to keep...
Though I worked a lot of overtime when the bills got too steep.
And I never passed a cry for help, though at times I shook with fear,
And sometimes, God forgive me, I've wept unmanly tears.
I know I don't deserve a place among the people here,
They never wanted me around except to calm their fears.
If you've a place for me here, Lord, I needn't be so glad,
I never expected or had so much, but if you don't, I understand."
There was a silence all around the throne where all the saints had often trod
As the Marine waited quietly, for the judgment of God.
"Step forward now Marine, you've borne your burdens well,
Walk peacefully on Heaven's streets, you've done your time in Hell."

With that, I thank you, Mr. President. I vote Yes.

PRESIDENT BURKE: Thank you, Mr. Glenn. I just wanted to remind everybody that next week on Monday, a week from today, I have my Community Awareness Meeting here at the Civic Center at 7:00 p.m. We are going to have like our Christmas party. County Councilman Parnell Jones is going to join us that evening and also our State Representative Stephanie Howes will also be joining us. The Mayor and the Chief of Police will be there as well (as always). I look forward to having a good time and really celebrating the holiday season.

I, too, would like to thank everybody for the gifts that we have gotten this evening. I want to wish everybody a very Merry Christmas and a Happy New Year holiday season and remind everybody that our next Council Meeting, should we not have anything come up, is scheduled for January 8, 2018. That's all I have this evening.

Mr. Suster, do you have anything for us this evening?

CLMN SUSTER: Yes, thank you. On behalf of my family, I would like to wish everybody, the Mayor's staff, residents that are in attendance here to have a Merry Christmas and a Happy New Year and if you're driving, drive safe so you come back to us safe. I, too, would like to thank all my colleagues for the gifts that were given this evening.

With that, I would like to make a motion that we adjourn.

PRESIDENT BURKE: On the motion made by Clmn Suster to adjourn tonight's meeting, all in favor signify by saying Yea. Any opposed? Meeting adjourned.

AYES: Suster, Vaughn, Dudley, Burke, LaMalfa, Glenn

ABSENT: Nenadovich

MEETING ADJOURNED AT 7:50 p.m.

APPROVED:

RESPECTFULLY SUBMITTED:

Matthew Burke
President of Council

Barbara Molin
Clerk of Council

*Adopted
December 11, 2017*

*6 YES
1 Absent*

ORDINANCE NO.: 78-2017

SPONSORED BY: COUNCILMAN MICHAEL NENADOVICH
CO SPONSORED BY: COUNCILMAN MATT BURKE, COUNCILMAN JOE LAMALFA,
AND COUNCILMAN JOSEPH SUSTER + ALL COUNCIL

AN EMERGENCY ORDINANCE REPEALING GARFIELD HEIGHTS ORDINANCE 69-1990, REINSTATING THE POSITION OF SAFETY DIRECTOR

WHEREAS, In Ordinance 69-1990, this City Council abolished the position of Safety Director from the City of Garfield Heights, and

WHEREAS, in doing so, the City did not reassign the duties associated with the position listed in the Charter and Codified Ordinances, and

WHEREAS, currently, the Mayor is performing all the duties designated to the position, and

WHEREAS, the City would like to repeal Ordinance 69-1990, reinstate the position of Safety Director, and appoint the Mayor to fill the position, and

WHEREAS, the Safety Director will receive a rate of pay of Range 1, Step 1 (minimum wage) as set forth in Ordinance 60-2016, or the equivalent thereto.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Garfield Heights, Ohio that:

SECTION 1. Garfield Heights Ordinance 69-1990 shall be revealed, the position of Safety Director shall be reinstated and the Mayor shall be appointed to the position of Safety Director.

SECTION 2. The Finance Director is hereby authorized and directed to issue her vouchers of the City, for the purpose set forth in SECTION 1.

SECTION 3. Council declares this Ordinance to be an emergency measure necessary for the preservation of the health, safety, and welfare of the citizens of the City of Garfield Heights; this Ordinance shall take effect immediately upon its passage and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: *December 11, 2017*

APPROVED: *[Signature]*
MAYOR

[Signature]
PRESIDENT OF COUNCIL

ATTEST: *[Signature]*
CLERK OF COUNCIL

EFFECTIVE DATE: *12/11/2017*

Exhibit B

The Law Firm of Curt C. Hartman

7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
(513) 379-2923
hartmanlawfirm@fuse.net

June 25, 2020

via e-mail (triley@garfieldhts.org)

Mr. Tim Riley
Law Director, City of Garfield Heights
5407 Turney Road
Garfield Heights, OH 44125

Re: Request for Initiation of Civil Action Pursuant to R.C. 733.56 et seq.

Mr. Riley:

This law firm represents Frank Wagner, a citizen and taxpayer within the City of Garfield Heights and on whose behalf this taxpayer-demand letter is being tendered with respect to the on-going abuse of corporate powers and the misapplication of funds of the municipal corporation addressed further below.

Section 32 of the Charter of the City of Garfield Heights provides, in pertinent part:

The Mayor...shall not hold any other public office or public employment except that of Notary Public or a member of the State Militia, or the Reserve Corps of the United States or a member of various Boards and Commissions with the approval of Council, and shall not be interested in the profits or emoluments of any contract, job, work or service with or for the Municipality.... If the Mayor shall cease to possess any of these qualifications ..., his office shall immediately become vacant.

Thus, as clearly and explicitly provided for by the Charter of the City of Garfield Heights, one of the qualifications of the Mayor is that he may not, with certain limited exceptions, hold any other public office or public employment.

Vic Collova has held the position and received compensation as Safety Director of the City of Garfield Heights since December 11, 2017. His employment and compensation as Safety Director was enacted by the Garfield City Council on that date through adoption of Ordinance No. 78-2017. However, during the same period that he has held the position and received compensation as Safety Director of the City of Garfield Heights, Vic Collova has also served and received compensation as the Mayor of the City of Garfield Heights. And to this day, Vic Collova continues to hold the positions of Mayor and Safety Director.

By simultaneously holding the position of Mayor and of Safety Director, Vic Collova has violated and continues to violate the requirements of Section 32 of the Charter of the City

of Garfield Heights. Such conduct constitutes an abuse of corporate powers and, due to the additional pay provided to him as Safety Director, results in the on-going misapplication of municipal funds.

An abuse of corporate powers and the misapplication of municipal funds also arise under these circumstances as Vic Collova, as Mayor, has an interest in the profits or emoluments of a contract, job, work or service with or for the City of Garfield Heights.

Furthermore, because Vic Collova no longer possessed and continues to not possess all the qualifications to serve as Mayor, specifically, the qualifications that he not hold any other public office or public employment and not be interested in the profits or emoluments of any contract, job, work or service with or for the municipality, the office of Mayor has "immediately become vacant" and any further efforts by Vic Collova to claim or exercise such authority is a further abuse of corporate powers and a misapplication of municipal funds.

In light of the foregoing and pursuant to Sections 733.56 *et seq.* of the Ohio Revised Code, Frank Wagner hereby makes demand upon you, as the Law Director for the City of Garfield Heights, to make application to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers and the misapplication of funds of the municipal corporation, to recover any funds already misapplied, to have the office of Mayor declared vacant, and to have any ensuing actions of Vic Collova under the claimed authority as Mayor declared null and void.

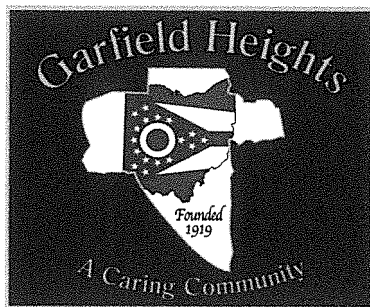
I am sure you appreciate that time is of the essence and, thus, would ask for a prompt and immediate response as to whether you will file such an action.

Sincerely,

Curt C. Hartman



cc: Frank Wagner



The City of Garfield Heights

Office of the Law Director

July 23, 2020

Mr. Curt C. Hartman
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230

RE: Safety Director Issue

Dear Mr. Hartman:

This letter is in response to your letter to me of June 25, 2020.

1. In your letter, you allege that the Mayor of the City of Garfield Heights is violating Section 32 of the Charter of the City of Garfield Heights. This Section provides that the Mayor may not hold any other public office or public employment with exceptions that are irrelevant to this case. You allege that he is holding “public office or public employment” in addition to being the Mayor of Garfield Heights because of Ordinance No. 78-2017, appointing him, *inter alia*, as the safety director and providing compensation therefore.

Our review of Ordinance No. 78-2017 indicates that the legislation purported to appoint Mr. Collova as the Safety Director. However, it is clear under law that the City Council did not have the authority to make such an appointment. Rather, the authority for appointing all directors of departments and divisions is solely that of the Mayor. Section 33 of the Garfield Heights Charter provides that the Mayor “. . . shall appoint all officers and employees of the City, except members, officers, and employers of the Council and Judges.”

It is, therefore, my opinion that the Council did not have the authority to appoint the Mayor as Safety Director and that action was void *ab initio*. Thus, the Mayor does not occupy multiple public offices or employment. However, the rest of the Ordinance is valid and should be interpreted as delegating duties ordinarily performed by the Safety Director to the Mayor as additional duties. The Council is well within its right to do this. (See Sections 16 and 36 of the Charter). I anticipate council will be presenting legislation to clarify any ambiguities in Ordinance 78-2017.

2. You allege abuse of corporate powers and misapplication of municipal funds by stating that the Mayor has an interest in the profits or emoluments of a contract, job, work or service with or for the City of Garfield Heights. However, the only money that the Mayor receives is for his job as Mayor, including payment for the additional Safety Director’s duties that the Council approved. The Council took this action to save taxpayer dollars that would be expended to hire a separate Safety Director.

Exhibit D

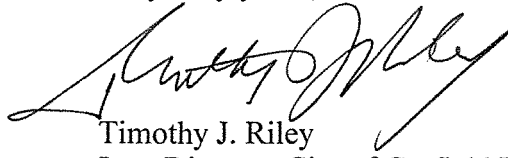
It is, therefore, my opinion that there is no abuse of corporate powers or misapplication of municipal funds.

3. You state that because of your position on this issue, the office has become vacant, and that the Mayor can no longer exercise any powers going forward. However, as we have seen, the argument that you predicate this position on does not accurately reflect the status of the Mayor at this time. Therefore, it is my opinion that the Mayor's office is not vacant and that he remains in the office to which the people have elected him.

Considering all this information, I would decline to initiate the action requested. If you have any further concerns, please feel free to contact me.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy J. Riley", written in a cursive style.

Timothy J. Riley
Law Director, City of Garfield Heights