

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DANIEL S. PALETKO,

Case No. 20 - CZ

Plaintiff,

vs.

DEARBORN HEIGHTS CITY COUNCIL
and DENISE D. MAXWELL,
individually and in her official capacity,
and jointly and severally,

Defendants.

GARY T. MIOTKE (P41813)
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Pursuant To MCR 1.109(D)(2)(a)

Civil actions between these parties or other parties arising out of the transaction or occurrence alleged in the complaint have been previously filed in this Court, where they were given case numbers 19-005358-AW, 19-007248-AW, and 19-010859-AW and assigned to Judge Muriel D. Hughes. The actions are no longer pending.

/s/ GARY T. MIOTKE
GARY T. MIOTKE (P41813)
Attorney for Plaintiff

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, by and through his attorney, and for his Complaint he states
that:

JURISDICTION, PARTIES, VENUE

1. Plaintiff is a resident of the City of Dearborn Heights, County of Wayne, State of Michigan.

2. Plaintiff is the Mayor of the Michigan municipal corporation known as the City of Dearborn Heights, Michigan (hereafter “City”) which is located in the County of Wayne, State of Michigan.

3. Defendant, DEARBORN HEIGHTS CITY COUNCIL (hereafter “Council”) is the City’s legislative body.

4. The Council performs its duties in the County of Wayne, State of Michigan.

5. Defendant, DENISE D. MAXWELL (hereafter “Maxwell”) is on information and belief an owner of property in the County of Wayne, State of Michigan.

6. Maxwell is the Chair of the Council.

7. This case is brought by Plaintiff individually and in his official capacity.

8. This case is brought against the Council in its official capacity based on the actions of a majority of the Council.

9. This case is brought against Maxwell individually and in her official capacity.

10. The events giving rise to this case pertain to the City.

11. Further, many of the events giving rise to this case arose within the County of Wayne, State of Michigan.

12. Plaintiff seeks declaratory relief involving amounts in excess of \$25,000, injunctive relief, and other related relief such that this matter is otherwise properly before this Court.

BACKGROUND FACTS AND COMMON ALLEGATIONS

I. Charter Provisions

13. City Charter Section 4.3 states:
Section 4.3. - Vacancy in Elective Office.

In addition to the other provisions of this Charter, a vacancy shall be deemed to exist in any elective office when such officer fails to qualify within ten (10) days after his election or appointment, fails to perform the duties of his office for a period of ninety (90) days, dies, resigns, or is voluntarily removed or recalled from office, moves from the City, is convicted by a Court of competent jurisdiction of a felony, or misconduct in office, or is judicially declared to be mentally incompetent.

14. City Charter Section 5.3 states:
Section 5.3. - Duties of the Mayor.

Under the provisions of this Charter, insofar as it is required by law, and for all ceremonial purposes, the Mayor shall be the chief administrative and executive head of the City. He shall be the conservator of the peace and may exercise within the City the powers conferred upon sheriffs to suppress disorder and shall have the authority to command the assistance of citizens to aid in the protection and preservation of property, the enforcement of ordinances, rules and regulations of the Council, and in addition to these functions, shall be charged with the following powers and duties:

- (a) It shall be his responsibility to enforce all of the laws and ordinances of the City;
- (b) Except as is otherwise provided in this Charter, the Mayor shall have the power of appointment and removal over all directors, comptroller, commissions, and boards which are in charge of the several departments of this City;
- (c) He shall see that all terms and conditions imposed in favor of the City or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed;
- (d) He shall authenticate by his signature such instruments as the Council, this Charter, or the laws of the State of Michigan require;
- (e) He may attend all meetings of the Council with the right to take part in the discussions, but without the right to vote;
- (f) He shall prepare and administer the annual budget and keep the Council fully advised at all times as to the financial condition and needs of the City;
- (g) He shall submit to the Council each month sufficient data and information apprising the Council of the relationship between estimated and actual income and expenses to date;
- (h) He shall, on or before the first of April of each year, prepare and submit to the Council a complete itemized proposed budget for the next fiscal year in accordance with the provisions of this Charter;
- (i) He shall, from time to time, recommend to the Council for adoption such measures as he may deem necessary or expedient for the successful operation of the City;
- (j) He shall be responsible for the efficient administration of all departments of the City government and shall allocate building space to the various departments of the City;

- (k) He shall approve the rules and regulations of the several directors, commissions or boards in charge of the departments of the City government before such rules and regulations shall become effective except as is otherwise provided by this Charter;
- (l) He shall exercise and perform all the administrative functions of the City that are imposed by law, this Charter or by any other city ordinance, or resolution not inconsistent with the provisions of this Charter;
- (m) He shall have such other powers and perform such other duties as may be prescribed by law, this Charter, or as may be required of him by ordinance or by direction of the Council.

15. City Charter Section 5.13 states:

Section 5.13. - Corporation Counsel—Function and Duties.

- (a) There shall be a Corporation Counsel who shall be appointed by the Mayor subject however, to the approval and consent of the Council and he shall be and remain a member in good standing of the State Bar of Michigan and shall perform the following duties and responsibilities;
- (b) He shall act as legal advisor to the Mayor and the Council in matters relating to their official duties and shall give legal opinions concerning affairs of the City to the Council and the Mayor, which opinions shall be in writing and a copy thereof shall be filed with the City Clerk;
- (c) He shall prosecute and defend, in the name of the City, all cases in all courts and before all legally constituted tribunals whenever the City is a party thereto;
- (d) Upon request of the Mayor and/or the Council, he shall prepare or officially pass upon all contracts, bonds and other instruments in writing in which the City is concerned and shall certify, before execution, as to their legality and correctness of form;
- (e) He shall file in the office of the City Clerk the original copy of all franchises granted by the City, and of all papers constituting a part of the proceedings in all courts or legally constituted tribunals to which the City is a party together with the proper data and information concerning the same;
- (f) He shall be charged with the responsibility of calling to the attention of the Council and the Mayor all matters of law and changes of developments therein affecting the City;
- (g) He shall perform such other and further duties as may be prescribed by this Charter, the Council or the Mayor;
- (h) He shall act as legal advisor to and for each and every one of the several departments, commissions, boards, administrative offices and agencies of the City as directed by the Council or the Mayor;
- (i) He may appoint, subject to the Mayor's approval, such assistant or assistants corporation counsel as he deems necessary to carry out the proper functions of his office;
- (j) The Mayor or the City Council may retain special legal counsel to appear Of Counsel to the Corporation Counsel for the purpose of assisting the Corporation Counsel for a special matter and for such limited time and purpose as the Mayor or Council shall specify;
- (k) The Corporation Counsel and any assistants that may be engaged pursuant to the provisions of this Charter shall receive such compensation as may be determined by the Council from time to time;
- (l) The Corporation Counsel and assistants thereafter appointed shall be a resident (and qualified elector) of the City of Dearborn Heights.

16. City Charter Section 5.15 states:

Section 5.15. - Department Heads: Commission Members.

- (a) Except as otherwise provided in this Charter, all department heads and members of the commissions and boards of this City government whether the same be established by this Charter or by an act of Council, shall be appointed by the Mayor; the names of such appointees shall be certified in writing to the City Clerk on or before the third Monday in April following each regular biennial City election, and at such other times as may be required to fill vacancies, or to replace any head of a department or member of a commission or board who shall have been removed from office; provided however, that the Corporation Counsel and the Assessor shall be appointed by the Mayor, and such appointment shall not be effective until confirmed by a majority of the City Council;
- (b) If the Mayor shall be unable for any reason to make any one or more of the appointments as required by this section within the time limit therefor, he shall on or before the last day specified for making such appointments, file with the City Clerk a statement specifying the appointment or appointments which he has been unable to make and set forth the reasons therefor, and such appointment or appointments shall be made and certified at a later date or dates, but not later than the first Monday in May of the same year;
- (c) The term of office of each head of the departments of the City government and of members of all commissions and boards shall commence the day following the third Monday in April following each regular biennial City election, and upon the date of certification to the City Clerk in the case of appointees to fill a vacancy, or to replace the head of any department or member of a commission or board who is removed from office;
- (d) Unless a definite term of office is specified in this Charter for the head of any department of this City government, such department head or heads shall hold office at the discretion of the Mayor; provided however, that no officer shall continue to hold office after the third Monday in April following the regular biennial City election unless he shall be reappointed to a new term;
- (e) Each department as outlined in this section shall be administered by a commission consisting of not less than three (3) members. Their primary function shall be that of formulating policy and programming to carry out the formulated policy. The commissioners shall receive nominal compensation as shall be determined by Council;
- (f) Each commission shall hold no less than ten meetings per year.

17. City Charter Section 6.7 states:

(b) Section 6.7. - Meetings of the Council to be Public.

All regular and special meetings of the Council shall be open to the public and the rules of order of the Council shall provide that the citizens shall have a reasonable opportunity to be heard at any such meeting on matters within the jurisdiction of the Council.

18. City Charter Section 6.9 states:

Section 6.9. - Rules of Order.

The Council shall determine its own rules and order of business and shall keep a written or printed journal of all its proceedings in the English language which shall be signed by the Chairman of the Council and the City Clerk. The vote upon the passage of all ordinances, and upon the adoption of all resolutions shall be taken by "YES" and "NO" votes and entered upon

the record except that where the vote is unanimous, it shall only be necessary to so state. An affirmative vote of the majority of the quorum of the Council is necessary to validate any resolution. Each member of the Council, who shall be recorded as present, shall vote on all questions decided by the Council unless excused by the unanimous consent of the members present, but no Councilman shall vote on any question in which he has any financial interest other than the common public interest.

19. City Charter Section 6.13 states:

Section 6.13. - Investigations.

The Council may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences needed to conduct formal investigations into the conduct of any department, office, or officer of the City and make investigations as to malfeasance, misfeasance, nonfeasance, or irregularities in municipal affairs. Failure to obey such subpoena or to produce books, papers, or other evidence as ordered under the provisions of this section shall constitute misconduct in office.

20. City Charter Sections 9.3, 9.4, and 9.5 state:

Section 9.3. - Specifications.

No public improvement costing more than Five Thousand (\$5,000.00) Dollars shall be contracted for or commenced until drawings, profiles and estimates for the same shall have been submitted to the Council and approved by it; and a copy thereof shall hereafter remain on file in the office of the Clerk subject to inspection by the public.

Section 9.4. - Approval of Contracts.

No contract shall be entered into by the City for the making of any public improvement or for the purchase of any materials, tools, apparatus, or any other thing or things, the consideration or cost of which shall exceed Five Thousand (\$5,000.00) Dollars, until the same shall have been approved by a majority of the Council elect.

Section 9.5. - Review.

All contracts prior to submission to the Council shall be reviewed by the Mayor.

II. Plaintiff's Retention of Special Legal Counsel and Amounts Due to Special Legal Counsel

21. In 2019, the Council brought a series of lawsuits against the Plaintiff in his official capacity as Mayor concerning the retention of special legal counsel by the Council and the Plaintiff's execution of the retention agreement on behalf of the City.

22. These lawsuits were brought in this Court where they were assigned Case Numbers 19-005358-AW, 19-007248-AW, and 19-010859-AW.

23. This Court ruled in the Plaintiff's favor in the first two lawsuits.

24. The Council succeeded in the third lawsuit to have the Plaintiff compelled to sign the retainer agreement on behalf of the City.

25. Plaintiff appealed this Court's decision in the third lawsuit to the Court of Appeals.

26. The Court of Appeals affirmed this Court's decision in the third lawsuit.

27. Having been sued by the Council three (3) times in his official capacity as Mayor, Plaintiff retained his own special legal counsel to defend him in these lawsuits, namely John O. Knappmann (hereafter "Knappmann") and Butzel Long.

28. Due to the lawsuits and the appeals, Knappmann and Butzel Long submitted invoices for services rendered to Plaintiff in defending against the lawsuits and pursuing the appeal.

29. The total amounts of invoices that have been submitted to the Plaintiff to date are \$16,110.58 for Knappmann and \$141,554.80 for Butzel Long.

30. At this time, not all of the invoices that had been submitted to the Plaintiff to date for Butzel Long have been submitted to the Council for approval and payment.

31. Nevertheless, the Plaintiff did submit to the Council for approval and payment the invoices for Knappmann and part of the invoices for Butzel Long.

32. Despite the Plaintiff's clear legal right to retain special legal counsel on his own pursuant to Chapter Section 5.13(j), the Council failed or refused to approve payment of the invoices incurred defending against the lawsuits the Council brought.

33. The original, purported basis for refusing to do so was that there were not contracts for Knappmann or Butzel Long that had been approved by the City Council.

34. Thereafter, the Plaintiff submitted for the Council's approval the agreements for Knappmann and Butzel Long.

35. The Plaintiff also once again submitted for the Council's approval the invoices for Knappmann and some of the invoices for Butzel Long.

36. The Council via Maxwell refused to approve the agreements allegedly because they were not contracts and allegedly because they had to be *pre-approved* by the Council.

37. For these same reasons, the Council also refused to consider the invoices that the Plaintiff had submitted to it.

38. Thereafter, the Plaintiff has regularly submitted for inclusion on the Council meeting agendas the invoices that he previously submitted to the Council.

39. Maxwell has just as regularly simply refused to include them on the Council meeting agendas.

III. Investigation

40. The Council's retention of special legal counsel was purportedly based on the Council's desire to conduct a "financial review" or "forensic audit" related to the City.

41. This purported justification for the "financial review" or "forensic audit" (hereafter "Investigation") has always been flawed where:

(A) The City's finances are regularly audited by Plante Moran, PLLC (hereafter "Plante Moran").

(B) The Council's alleged concerns could at least initially be more reasonably addressed by less drastic means than an Investigation.

(C) The Council's concerns have been adequately addressed by the Plaintiff and his administration without the need for such an Investigation to the extent that the Council has raised specific issues with the Plaintiff and his administration.

42. Further, and in reality, the underlying motive for the Investigation has been and remains to try to force the Plaintiff to resign as the City's Mayor.

43. This has been planned by the majority of the Council (including Maxwell) in order to result in Maxwell becoming Mayor on at least a temporary basis pursuant to the Charter.

44. Thereafter, Maxwell could seek to retain the office of Mayor with the advantage of incumbency.

45. This plan has been premised in part on the idea that the Investigation would create so much stress for the Plaintiff that his health would be compromised and he would be forced to resign.

46. It is also based on the idea that the Plaintiff would otherwise be forced to resign just based on having to deal with the Investigation while running the City and having inadequate time, inadequate professional assistance, and inadequate resources to do all that would be demanded of him.

47. The Council has retained special legal counsel (hereafter "Mr. Schenk's firm") to assist it with the Investigation with Mr. Schenk ("Schenk") being the main attorney from this firm working on this matter.

48. As part of this retention, it appears that Mr. Schenk's firm has also engaged the services of the accounting firm Rehmann Robson (hereafter "Rehmann") to assist it or the Council with the Investigation.

49. Mark Kettner (hereafter "Kettner") is the partner from Rehmann who is the main accountant from this firm working on this matter.

50. Despite the Plaintiff's Open Meetings Act objection to it, the Council elected to have Kettner and/or Schenk meet with individual members of the Council and others to discuss the scope of the Investigation and to formulate the plans for the Investigation.

51. None of these individual meetings was a public meeting wherein the public or the Plaintiff could attend or have any input into the topics discussed.

52. After the private individual meetings, the Council agreed to plans for the Investigation with practically no deliberations and no deliberations whatsoever regarding the specific plans for the Investigation.

53. On or about July 28, 2020, the Council passed a resolution requesting or purportedly "subpoenaing" a great volume of records from the Plante Moran, the Plaintiff, the Plaintiff's office, the City Comptroller, and the Comptroller's Office (hereafter the "Request").

54. The Plaintiff vetoed this resolution.

55. The Council overrode Plaintiff's veto of this resolution.

56. Despite the volume of items requested, the Request gave Plante Moran until August 3, 2020 to provide everything requested of it and gave the Plaintiff until August 10, 2020 to provide everything requested of him.

57. After his veto was overridden, Plaintiff responded to the Request.

58. In his response, Plaintiff clarified his understanding of the Request, objected to certain procedural aspects of the Request, and objected to one aspect of the Request on substantive grounds.

59. For example, Plaintiff objected procedurally to the amount of time given to respond and to the fact that the Request was misdirected to a significant extent.

60. Meanwhile, the only substantive set of objections pertained to the specific request for “remote access to the payroll service used by the City to obtain detailed payroll records for as many years as are available, going back at least three – five years.”

61. Plaintiff’s substantive objections were based on his and the City’s obligations under federal and Michigan laws protecting employee privacy.

62. That is, remote access to such payroll records would reveal legally restricted information in a way that would violate legal requirements under the Michigan Social Security Number Privacy Act, “The Privacy Rule” under the Health Insurance Portability and Accountability Act (hereafter “HIPAA”), and the Family and Medical Leave Act (hereafter “FMLA”).

63. Significantly, neither the Council, Maxwell, Schenk, nor Kettner had or has ever indicated that such legally restricted information had any relevance to the Investigation.

64. Plaintiff’s concern about the misuse of such legally restricted information is based on more than conjecture.

65. After Maxwell learned that a City employee had the Coronavirus, the Plaintiff, the City’s Human Resources Director, and the employee received inquiries from the media and/or others asking if this employee had the disease.

66. Whether the employee had the Coronavirus and/or went on leave because of it is legally restricted information under HIPAA and the FMLA.

67. Since the inquiries implied mismanagement by the Plaintiff and/or his administration, the Plaintiff reasonably believes that the disclosure of this legally restricted information to the

media was undertaken by Maxwell, another member of the Council, and/or someone allied with them who received such information from Maxwell.

68. Further, in his veto and then his response, Plaintiff noted that he and his office did not have much of what the Council was requesting.

69. For example, the Plaintiff does not possess or control items in the possession or control of Plante Moran or the City's Act 345 pension board.

70. Yet, the Plaintiff still assisted as he could in facilitating the Council's ability to obtain such items that were controlled or possessed by others.

71. Further, Plaintiff indicated his willingness to provide payroll record information provided the confidentiality of the legally restricted information could be maintained.

72. Indeed, in a meeting between the Plaintiff, Plaintiff's Chief of Staff, and Kettner, Kettner agreed to more limited access to such payroll record information.

73. Based in part on the Plaintiff's efforts, Plante Moran also provided the Council with access to a large volume of requested documents.

74. On August 27, 2020, Maxwell sent the Plaintiff a letter complaining about his response to the Request.

75. Among many other things, Maxwell stated that:

(A) Plaintiff was allegedly trying to obstruct the Investigation. Maxwell made this statement despite Plaintiff's ongoing efforts to comply with the Request and to assist in the Investigation.

(B) Plaintiff allegedly had no right to object to the Request. Maxwell made this statement even though the Council was trying to gain access to legally restricted information.

(C) Maxwell called the Request “the subpoena”. She did so even though the Request was not a subpoena and did not in any way resemble a subpoena.

(D) Plaintiff purportedly had a duty to do more than to comply with the Request as worded and as authorized by City Charter Section 6.13. Inconsistent with any law related to actual subpoenas, Plaintiff allegedly had a duty to read the Charter “as a whole” and to create documents that did not currently exist in responding to the Request.

(E) “The Charter provides no time frames for subpoena responses.” Implied by Maxwell in making this statement was the idea that the Council could allegedly dictate any period for compliance with the Request and it would necessarily be legal.

(F) Only “the Council has the power to determine the terms on which the subpoena is issued, the adequacy of the information provided, and whether compliance with our subpoena has been achieved.”

(G) “Further, while the intent of the financial review is not to review authorized leave time, social security numbers of employees, or protected health information, there is an absolute need to review payroll records to determine if employees have been paid properly and within authorized compensation levels. ... Do not mistake this offer as any sort of acknowledgement that Council lacks authority to review all of the information referenced in your letter. The City Council most certainly does have the authority, as outlined under each of the statutes you referenced.” (Emphasis added.)

(H) “You are hereby placed on notice that if you continue to refuse to comply with this financial investigation and the lawful resolutions adopted by the City Council, I will recommend

that City Council remove you from office, including initiating court action, if necessary.”

(Emphasis added.)

76. In the first lawsuit that the Council purportedly brought against the Plaintiff, the Court ruled against the Council because the Council had not as a body authorized the filing of the first lawsuit.

77. In the first lawsuit, Schenk made the completely unfounded argument that Maxwell as “Council President” had the authority to decide on her own to initiate the first lawsuit.

78. Of course, this Court rejected this specious argument and ruled against “the Council”, although it is perhaps unfair to say that the ruling was against “the Council” where it had not authorized the first lawsuit.

79. On September 4, 2020, Maxwell once again improperly assumed authority to act on behalf of the Council as it related to the Investigation.

80. Indeed, Maxwell outdid this prior unauthorized action by improperly assuming to act on behalf of the City.

81. More specifically, Maxwell sent a letter via email to Mr. Martin Olejnik, a CPA and partner at Plante Moran (hereafter “Olejnik”).

82. Yet, the Council had never authorized Maxwell to send either the email or the letter.

83. Nor had the City more generally authorized Maxwell to send these things in a way conforming to the Charter. That is, these things were not authorized by the Council via a motion that would have been subject to a possible Mayoral veto.

84. Regardless, in her email to Olejnik, Maxwell told Olejnik to pass her letter on to Plante Moran’s legal department.

85. Further, in her September 4th letter, Maxwell alluded to the Investigation and the involvement of Schenk's firm and Rehmann in the Investigation.

86. She also stated: "In connection with their work, Rehmann would like to make inquiries of you and may want/need to obtain work papers and related documentation for the audit and non-audit services performed by your firm. Accordingly, you are hereby authorized to respond to their requests fully and without limitation. ... Please allow Rehmann to copy any information from files related to our audits and non-audit services that they request, unless deemed proprietary. We will reimburse you for the reproduction costs." (Emphasis added.)

87. On September 8, 2020, the Council adopted by a 4-3 vote the "Resolution of the Dearborn Heights City Council Endorsing Council Chair's Letter to Mayor Paletko Dated August 27, 2020" (hereafter "9/8/2020 Resolution") (Emphasis in original.)

88. Among other things, the 9/8/2020 Resolution referred to Maxwell's August 27, 2020 letter to the Plaintiff and said that:

(A) The letter advised the Plaintiff "that his continued failure to perform the duties of Mayor constitutes misconduct in office."

(B) The "Dearborn Heights City Council endorses and ratifies the Council Chair's letter of August 27, 2020 as the position of the entire City Council."

(C) The Council intends to pursue any and all legal methods available in support of its financial investigation and may initiate actions to remove Plaintiff as Mayor if he fails to comply with the Investigation.

(D) Schenk's firm is requested to research the requirements for removing the Plaintiff from office on the grounds of misconduct in office or otherwise as an amendment to its scope of services.

89. On September 17, 2020, the Plaintiff issued his veto of the 9/8/2020 Resolution and of the motion approving it.

90. On September 22, 2020, the Council and Maxwell took up the question of whether to override this veto.

91. Despite no motion having been made to override this veto, the Defendants proceeded to a roll call vote with those voting in favor being Council members Hicks-Clayton, Muscat, and Wencel and those voting against being Council members Abdallah, Bazzi, and Constan.

92. Maxwell refused to vote.

93. The City Clerk then noted that there had been no motion made to override this veto.

94. Thereafter, a motion was made to do so.

95. Maxwell once again called for a roll call vote.

96. Yet, Maxwell only called on those who previously voted against the override of the veto, namely Council members Abdallah, Bazzi, and Constan.

97. They once again voted against the override of the veto.

98. Maxwell refused to call on any other members of the Council to vote on the possible veto override.

99. Regardless, the veto override attempt failed, since it did not garner the five votes needed for it to be successful.

IV. Reappointments of Corporation Counsel and of Assistants Corporation Counsel

100. Gary T. Miotke (hereafter "Miotke") served as an Assistant Corporation Counsel for the City for two different periods.

101. More specifically, Miotke served as an Assistant Corporation Counsel in the administration of Mayor Lyle Van Houten from November 1988 through April 1991.

102. Thereafter, Miotke served as an Assistant Corporation Counsel in the administration of Mayor Ruth A. Canfield from January 1994 through June 1999.

103. In June 1999, Miotke was appointed the City's Corporation Counsel by Mayor Ruth A. Canfield.

104. Thereafter, Miotke has served continuously as the City's Corporation Counsel from June 1999 with his most recent re-appointment by the Plaintiff being confirmed by the Council in or around January 2018.

105. Like Miotke had, members of various law firms have acted as the City's Assistants Corporation Counsel through their law firms or otherwise.

106. Like Miotke had, these lawyers were appointed as Assistants Corporation Counsel by the Corporation Counsel subject to the approval of the Mayor pursuant to Charter Section 5.13(i).

107. The lawyers acting as Corporation Counsel, the lawyers acting as Assistants Corporation Counsel, and their firms have not had specific written agreements with the City in general if at all.

108. Instead, the engagement of these lawyers has been affected by their appointment pursuant to Charter Section 5.13(a) and (i) and their subsequent performance of legal services on behalf of the City.

109. The payment of these lawyers and/or their law firms has been authorized by Charter Section 5.13(k).

110. That is, the City Council pre-approved fee schedules from time to time.

111. Thereafter, after their appointments, the lawyers and/or their law firms have performed services.

112. Then, subject to the Mayor's review and the City Council's approval of their invoices for services rendered, they have been paid per the fee schedules based on the services they have performed.

113. This manner of engaging and paying lawyers and/or law firms is not merely the City's customary way of engaging and paying its lawyers and/or law firms.

114. In municipalities in the Metro Detroit area that do *not* have full-time, in-house employees acting as their municipal attorneys (which is the vast majority of said municipalities), this is also a typical and customary way that these municipalities engage and pay their lawyers and/or law firms.

115. On February 26, 2019, the Council adopted Motion 19-067 which set the hourly rate at \$140 per hour for Corporation Counsel and all lawyers and/or firms performing services as Assistants Corporation Counsel.

116. Motion 19-067 did not alter the rate of compensation for district court services which had been previously set by the City Council in June 2015 at \$730 for a full day and \$450 for a half day.

117. This fee schedule for Corporation Counsel and all firms acting as Assistants Corporation Counsel was not limited to any period and is still in force.

118. On November 14, 2019, Maxwell sent the Plaintiff an email and attachment which were copied to all members of the Council, including Maxwell.

119. The subject of the email was “Corporate Council” [sic] and the email told the Plaintiff to “review the attached letter regarding Corporate Council [sic] Gary Miotke.”

120. The letter stated that it had come to Maxwell’s attention that “several of our Council Members” were not comfortable with Miotke’s performance.

121. The letter also stated that discussions with these members “suggested a (collective) opinion” that Miotke was “not equally serving in the best interest of our residents, our Council, and yourself.”

122. Further, the letter said that Maxwell believed that Miotke’s reappointment would “not be approved by the Council in January 2020.”

123. Significantly, there was never any public discussion at an open meeting noticed up and conducted in conformity with the Open Meetings Act where this “collective” opinion had been reached.

124. In other words, this “collective” consensus had been reached by the majority of the Council in deliberations among themselves in violation of the Open Meetings Act.

125. Pursuant to Charter Section 5.15(c), Miotke's term as Corporation Counsel actually was to end the day following the third Monday in April 2020.

126. Yet, from the time that Maxwell sent her November 14, 2019 email and letter up through the day following the third Monday in April 2020, the Council never engaged in any public discussion in conformity with the Open Meetings Act where the basis for this "collective" consensus was openly discussed among the members of the Council who had reached this consensus.

127. After the Plaintiff had submitted to the Council for confirmation the re-appointments of Miotke and the City Assessor in April 2020, the Council did not confirm or reject the re-appointments, but it instead referred them back to the Mayor for them to be stated separately.

128. Thereafter, in May 2020, the Plaintiff submitted Miotke's re-appointment to the Council for confirmation such that it was on the agenda for the May 12, 2020 electronic Council meeting.

129. Although there was a motion made to confirm the re-appointment, no member of the Council seconded the motion.

130. As such, the motion was *not* considered.

131. Thereafter, discussion took place between Maxwell and other Council members.

132. Contrary to Charter Section 5.3(e), Maxwell had Plaintiff muted during the Council's discussions as she has generally done to the Plaintiff during the time that the City has had to conduct electronic Council meetings.

133. Although the Plaintiff was raising his hand and trying to be recognized, Maxwell refused to recognize him to discuss this matter and he could not be heard.

134. Maxwell said there was nothing more to discuss since the motion purportedly “failed”.

135. Councilman Muscat expressed concerns that “in the meantime we are not going to have an attorney. That’s what, that’s what’s scaring me.”

136. Maxwell stated: “Well my, my understanding is we already approved, um, Mr. Miotke until this COVID thing was over. We already discussed this at a previous meeting so we’re covered there. This is for the two year appointment we’re discussing, that’s what failed.”

137. Further discussion took place about what exactly this meant.

138. A short time later, Maxwell recognized Miotke as “Counsel, Corporate Miotke.”

139. Miotke said he was unclear about what was being done.

140. He noted that there was a line of thought that he would hold over and another line of thought that he would not hold over.

141. He asked: “Is the Council taking the position that I hold over, in which case then I would continue to act until the appointment of my successor? Is that what’s happening?”

142. Maxwell nodded affirmatively and in a muddled sounding way said, “That is correct.”

143. Miotke said, “I’m sorry, yes?”

144. Maxwell said, “Yes.”

145. Miotke said, “Ok.”

146. Councilman Muscat said, “I would hope.”

147. Thereafter, Miotke continued to perform the duties of Corporation Counsel.

148. Also, the lawyers acting as Assistants Corporation Counsel continued to perform their duties.

149. Those affiliated with the City continued to rely on and still continue to rely on Miotke and the lawyers acting as Assistants Corporation Counsel.

150. Indeed, the Council via Maxwell specifically continued to rely on Miotke and to give Miotke assignments as Corporation Counsel.

151. The Council also continued to approve payments to Miotke and to the law firms of the Assistants Corporation Counsel for performing the City's legal services.

152. Further, the Council and Maxwell officially recognized Miotke as Corporation Counsel in official documents such as the approved minutes of the Council's meetings.

153. On August 11, 2020, the Council approved as part of its regular meeting agenda the agenda as submitted with the removal of Current Claims 6-11 and 6-16.

154. The removed claims were for Miotke and Secrest Wardle, a law firm employing Assistants Corporation Counsel.

155. Discussion of the removal of the invoices centered on the erroneous idea that Miotke and Secrest Wardle did not have contracts with the City.

156. The Council adopted Motion 20-269 to refer these current claims back to the "Administration and tie bar these claims to an interim contract and bring it forward to the City Council for appointment of Corporation Counsel Miotke."

157. The Council also unanimously adopted Motion 20-270 "for Corporation Counsel Miotke to provide to City Council a temporary contract to not exceed forty-five days."

158. On August 20, 2020, Plaintiff vetoed Motions 20-269 and 20-270.

159. Plaintiff's reasons for doing so were:

(A) The Motions appeared to be based on the misunderstanding that the Charter required written agreements for all of the City's contracts.

(B) The payment of attorney fees had already been authorized by the Council.

(C) The Council had reached a consensus at its May 12, 2020 meeting that Miotke and the other lawyers doing work for the City were to continue to perform their duties until the appointment of Miotke's successor.

(D) It would be unfair *not* to pay the claims.

(E) It would be imprudent *not* to pay the claims.

(F) Most importantly, the Council attempted to exceed its authority under the Charter by adopting the Motions.

160. As to this last point, Plaintiff noted that the Motions attempted to exceed such authority in at least three ways:

(A) The Council was attempting to assume the Plaintiff's power to appoint the Corporation Counsel.

(B) The Council was attempting to appoint the Corporation Counsel on an "interim" or "temporary" basis.

(C) The Council was encroaching on the Plaintiff's powers to remove the Corporation Counsel.

161. On August 25, 2020, the Council overrode the Plaintiff's veto of Motions 20-269 and 20-270.

162. On August 28, 2020, Maxwell had the Council's Secretary send a Notice of Electronically Held City Council Study Session for September 1, 2020 starting at 5:00 p.m.

163. The topics of discussion were "Corporation Counsel Contract (immediately followed by) CSO Projects".

164. On August 31, 2020, Mark S. Roberts, a partner of Secrest Wardle who acts as an Assistant Corporation Counsel (hereafter "Roberts") sent a letter by email addressing the Council's refusal to pay Secrest Wardle's invoice.

165. While Roberts' letter discussed Secrest Wardle's "long-standing relationship with the City", it also stated that Secrest Wardle "cannot, however, continue to provide the legal services to the City without payment."

166. Prior to the Study Session, Miotke sent an email and attached letter to the Council.

167. In this letter, Miotke noted that he would have ordinarily prepared the "interim agreements for the provision of legal services" based on the Council's override of the veto related to Motions 20-269 and 20-270.

168. However, he went on to state that he could not ethically prepare such an agreement given the current state of affairs.

169. That is, preparing such an agreement without Council having its own attorney involved could be problematic where Miotke would "possibly have to legally and potentially personally challenge the City Council's positions" related to such agreement.

170. Miotke noted that he could possibly address these matters with Schenk to alleviate Miotke's concerns, since Schenk's advice seemed to be the basis for the refusal to pay for Miotke's services and for the services of Secrest Wardle.

171. On September 1, 2020 at 5:00 p.m., the Plaintiff and many other individuals were attempting to enter the Electronic Study Session.

172. Maxwell denied everyone access to the meeting at its start time except for Council members and (on information and belief) certain employees of the City Clerk's Office.

173. Plaintiff was one of the many individuals denied access to the meeting at its start time.

174. While everyone was waiting to be admitted to the meeting, Maxwell and the Council conducted a pre-meeting meeting wherein the inclusion of the topic of "Corporation Counsel Contract" was discussed.

175. For reasons that are not entirely clear, the Council decided in this pre-meeting meeting not to include "Corporation Counsel Contract" as a topic of discussion for the Study Session.

176. After this violation of the Open Meetings Act had occurred, Maxwell admitted everyone into the meeting at approximately 5:06 p.m.

177. Not as part of the Study Session itself but instead as a matter of Public Comment at the end of this meeting, the "Corporation Counsel Contract" topic was raised and discussed.

178. Miotke and Roberts noted that the theory that there had to be some sort of written agreement approved by the Council for there to be an enforceable contract was without merit.

179. Schenk disagreed with this.

180. After the Study Session at about 8:38 p.m. Maxwell sent Roberts an email.

181. Neither the Plaintiff nor Miotke was copied on the email.

182. Maxwell directed Roberts to submit “a contract with the city” and Secrest Wardle’s “invoice for payment.”

183. Maxwell also told Roberts about the “collective” consensus of the Council that was alluded to in her November 2019 letter where she stated: “I originally sent the Mayor a letter last November advising him that I felt Mr. Miotke would not be reappointment [sic].”

184. On September 2, 2020, Maxwell sent Plaintiff another letter.

185. This letter pertained to “Legal services and Plante Moran invoices.”

186. In this letter, Maxwell claimed that it was inappropriate for the Plaintiff to submit invoices for “Mr. Gary Miotke, the Seacrest [sic] Wardle firm and Plante Moran” since there were “no contractual agreements” in place for any of them.

187. Maxwell stated that the invoices would continue to be removed from the agenda until the Council was presented “with one or more retroactive contracts”.

188. Maxwell’s insistence on such “retroactive contracts” appeared to stem from Schenk’s incorrect advice.

189. Yet, in giving such advice in general and at the September 1st Study Session, Schenk was exceeding his narrow scope of services as special legal counsel and attempting to perform the services of Corporation Counsel.

190. Regardless, Maxwell’s September 2nd letter more clearly showed that the “collective” consensus against confirming Miotke’s re-appointment was not just based on Maxwell’s belief or feeling where she stated: “By way of review, I sent you a letter in November 2019 advising you that there was not support on the Council to reappoint Mr. Miotke.”

191. On September 3, 2020, Roberts sent via email a letter agreement dated September 3, 2020 (hereafter “Letter Agreement”) to Maxwell and/or the City Clerk’s Office.

192. However, the Letter Agreement was actually addressed to the Plaintiff.

193. Still, Roberts sent a copy of it to the Plaintiff.

194. Among other things, the Letter Agreement provided that:

(A) It was a “retainer letter” to the Plaintiff, reducing to writing the existing agreement for Secrest Wardle to provide Assistant Corporation Counsel and Michigan Tax Tribunal legal services to the City of Dearborn Heights through the Office of Corporation Counsel.”

(B) The continuation of such service was contingent upon prompt payment of all amounts due to the Secrest Wardle.

(C) “Should either the City of Dearborn Heights or Secrest Wardle desire to terminate this agreement, however, 30-day’s written notice shall be provided to the other party in order to allow for the smooth transition.”

(D) Plaintiff was to sign it.

195. Given the Plaintiff’s schedule, the Plaintiff did not have an opportunity to review the Letter Agreement before its submission to the Council.

196. On September 8, 2020, at about 8:38 a.m., Miotke submitted via email to the Council a copy of Motion 19-067 and a request to pay him and the other lawyers performing services for the City.

197. This was done in part based on Maxwell’s September 2nd letter wherein she stated: “During yesterday’s study session, it was suggested that there may be a Council approved resolution establishing revised rates, but that has not been provided to justify a payment. Absent

such a document, I am again requesting that a contract be presented to Council to support these payments, as required by the Uniform Budgeting and Accounting Act, and our Charter.”

198. Maxwell responded to Miotke by email at 10:19 a.m. by changing her position from that of her September 2nd letter to suggest that Miotke and the other lawyers performing services for the City would not be paid even though Miotke had supplied a copy of Motion 19-067.

199. Per Schenk’s opinions, one of the purportedly distinguishing factors for why Motion 19-067 was not good enough was that it pertained to “Assistant Corporation Counsel” who are not “appointed” as opposed to outside counsel who are retained as special legal counsel pursuant to Charter Section 5.13(j).

200. Yet, despite the Letter Agreement’s provisions stating that it was for the provision of Assistant Corporation Counsel services and Schenk’s opinions, Maxwell and the Council still approved the Letter Agreement at their meeting on September 8th.

201. On September 17, 2020, the Plaintiff vetoed the motion approving the Letter Agreement for the following reasons:

(A) The motion approving the Letter Agreement and the Letter Agreement were unnecessary.

(B) The Council violated Charter Section 9.5 because the Letter Agreement was improperly submitted directly to the City Clerk’s Office based on the improper direction of Maxwell. Thus the Plaintiff did not have an opportunity to review it before submission and Charter Section 9.5 was violated.

(C) Most importantly, the Council violated Charter Section 5.13(i) by selecting, appointing and approving Assistant or Assistants Corporation Counsel.

202. On September 22, 2020, the Defendants voted to override this veto.

COUNT I: VIOLATION OF OPEN MEETINGS ACT

203. The Plaintiff incorporates paragraphs 1 through 202 above by reference.

204. This count is brought pursuant to the Open Meetings Act (hereafter “Act”).

205. More specifically, this count is brought pursuant to Sections 10, 11, and 13 of the Act, being MCL 15.270, MCL 15.271, and MCL 15.273.

206. The Council is a “public body” as defined by the Act.

207. Maxwell is a “public official” within the meaning of the Act.

208. The Defendants violated the Act by virtue of their pre-meeting meeting on September 1, 2020, because the Plaintiff and the public were not allowed to attend the pre-meeting meeting and the Defendants made a decision at it within the meaning of the Act.

209. The Defendants have also routinely and continually been violating the Act by engaging in “round-the-horn” deliberations outside of meetings conducted in compliance with the Act. This has been done to make decisions and/or to circumvent the requirements of the Act.

210. This practice has taken place in at least two ways relevant to this case:

(A) The Defendants used private meetings to discuss the scope of the Investigation and to formulate plans for the Investigation.

(B) Although the Defendants have yet to actually make an actual decision on this issue, the Defendants used private, “round-the-horn” deliberations to develop the “collective” consensus that Miotke’s re-appointment would not be confirmed as evidenced by Maxwell’s communications related to this issue.

211. The Defendants have also violated the Act by delegating to Maxwell decisions the

Council should make as a body.

212. For example, the Defendants violated the Act where they let Maxwell authorize for the Council and for the City as a whole Plante Moran's provision to Rehmann of information and documents related to the Investigation.

WHEREFORE, your Plaintiff respectfully requests this Honorable Court to enter a judgment in his favor against the Defendants, jointly and severally, granting him appropriate declaratory and equitable relief, and awarding him costs and attorney fees so wrongfully incurred. Further, prior to the entry of any Judgment in this case, Plaintiff also respectfully requests appropriate, preliminary declaratory and equitable relief, including preliminary injunctive relief, to address the Defendants' violations of the law and/or to maintain the status quo.

COUNT II: REQUESTS FOR DECLARATORY AND EQUITABLE RELIEF
BASED ON VIOLATIONS OF THE CITY CHARTER

213. The Plaintiff incorporates paragraphs 1 through 212 above by reference.

214. This count is brought pursuant to MCR 2.605 in that there are actual controversies between the Plaintiff and the Defendants about the meaning of various provisions with the City Charter such that the Plaintiff seeks a declaration of rights and clarification regarding other legal relations between the Plaintiff and the Defendants.

215. Plaintiff seeks declarations concerning the following matters and in the following ways:

(A) Plaintiff's Retention of Special Legal Counsel:

(1) Plaintiff appropriately retained Knappmann and Butzel Long

(2) There is no contractual impediment to Knappmann and Butzel Long being paid.

(3) Knappmann and Butzel Long should be paid as requested in their invoices.

(B) Investigation

(1) The scope of legal advice and services Schenk and Schenk's firm can give is limited to issues appropriately subject to the Investigation. Schenk and Schenk's firm cannot assume the duties of Corporation Counsel or Assistants Corporation Counsel.

(2) The Plaintiff and others have the right to object to any Council request or subpoena stemming from the Investigation as would anyone else subject to such a request or subpoena in a litigation context.

(3) The Defendants are barred from obtaining access to the legally restricted information.

(4) The Defendants must set reasonable time frames for compliance with any subpoena or request.

(5) The Defendants' subpoenas and requests are subject to review by this Court.

(6) The Defendants do not have the authority to remove the Plaintiff as the City's Mayor.

(7) Maxwell cannot assume to act on behalf of the Council and the Council cannot delegate its decision-making authority to Maxwell.

(C) Corporation Counsel and Assistants Corporation Counsel

(1) Through their official acts and otherwise, the Defendants have confirmed Miotke's re-appointment as Corporation Counsel. All Assistants Corporation Counsel and their law firms have likewise been authorized to continue to act on behalf of the City.

(2) In the alternative to (1), Miotke, the Assistants Corporation Counsel, and/or the law firms have been authorized to hold over in their positions and/or roles until the appointment of Miotke's successor.

(3) There is no contractual impediment to Miotke, Roberts, Secrest Wardle, the Assistants Corporation Counsel, and/or their law firms being paid.

(4) Miotke, Roberts, Secrest Wardle, the Assistants Corporation Counsel, and/or their law firms should be paid.

(5) The Defendants do not have the authority to appoint Corporation Counsel, Assistants Corporation Counsel, and/or law firms to perform the duties of Corporation Counsel or Assistants Corporation Counsel for any period of time.

(6) The Defendants do not have the authority to retain special legal counsel or law firms to assume the duties of Corporation Counsel or Assistants Corporation Counsel.

(7) Motions 20-269 and 20-270 are void since they violate the City Charter.

(8) The Letter Agreement and the motion approving it are void since they violate the City Charter.

(D) Mayor's Participation in City Council Meetings – Plaintiff is entitled to participate in City Council meetings to the same degree as any member of the City Council, but without the right to vote. This right includes the Plaintiff not being muted during electronic meetings unless all members of the Council are likewise muted.

(E) City Council Voting – On September 22, 2020, the Defendants violated the Charter where only the votes of three members were taken during a roll call vote on the question of whether to override the Plaintiff's veto of the 9/8/2020 Resolution and the motion approving it. Pursuant to Charter Section 6.9, each member of the Council, who was recorded as present, had to vote on this question.

WHEREFORE, your Plaintiff respectfully requests this Honorable Court to enter a judgment in his favor against the Defendants, jointly and severally, granting him appropriate declaratory and equitable relief, and awarding him costs and attorney fees so wrongfully incurred. Further, prior to the entry of any Judgment in this case, Plaintiff also respectfully requests appropriate, preliminary declaratory and equitable relief, including preliminary injunctive relief, to address the Defendants' violations of the law and/or to maintain the status quo.

COUNT III: VIOLATION OF FAIR AND JUST TREATMENT
CLAUSE OF MICHIGAN CONSTITUTION

216. The Plaintiff incorporates paragraphs 1 through 215 above by reference.

217. Article I, Section 17 of the Michigan Constitution of 1963 guarantees all individuals the right to fair and just treatment in the course of legislative and executive investigations and hearings.

218. The Defendants, in their official capacities and as a matter of policy or custom, have violated the Plaintiff's right to fair and just treatment in the Investigation in ways including, but not necessarily limited to, the following:

(A) Substantively, the Defendants have violated the Plaintiff's rights in that the Investigation was instigated and has been pursued for unfair and unjust reasons and purposes as described previously. Further, the Investigation has otherwise been substantively unfair and unjust.

(B) Procedurally, the Defendants have violated the Plaintiff's rights in that the Investigation has been pursued in unfair and unjust ways as described previously. The Defendants' actions have violated the Act, the Charter, and general rules of procedure typical

applicable to judicial processes and other quasi-judicial processes. Further, the Investigation has otherwise been procedurally unfair and unjust.

219. Without limiting the scope of the foregoing violations, the Defendants have also violated the Plaintiff's right to fair and just treatment in the Investigation by limiting and impairing his ability to have legal counsel to assist him in responding to the Investigation.

WHEREFORE, your Plaintiff respectfully requests this Honorable Court to enter a judgment in his favor against the Defendants, jointly and severally, granting him appropriate declaratory and equitable relief, and awarding him costs and attorney fees so wrongfully incurred. Further, prior to the entry of any Judgment in this case, Plaintiff also respectfully requests appropriate, preliminary declaratory and equitable relief, including preliminary injunctive relief, to address the Defendants' violations of the law and/or to maintain the status quo.

DEMAND FOR TRIAL BY JURY IS HEREBY MADE.

DATED: September 24, 2020

/s/ GARY T. MIOTKE
GARY T. MIOTKE (P41813)
Attorney for Plaintiff