

CITY COUNCIL AGENDA

November 5, 2018

7:30p.m.

The meeting convenes at City Hall, in Council Chambers, 1st Floor, 538 N. Market Street, Wooster, Ohio.

I. ROLL CALL & ORDERING OF AGENDA

II. APPROVAL OF MINUTES

III. COMMUNICATIONS FROM MAYOR/ADMINISTRATION

IV. PETITIONS/COMMUNICATIONS FROM PUBLIC

V. COMMITTEE REPORTS; PUBLIC HEARINGS

Law & Ordinance Committee

VI. UNFINISHED BUSINESS

1. Second Reading – ORDINANCE NO. 2018-018
AN ORDINANCE AUTHORIZING THE DIRECTOR OF ADMINISTRATION TO ENTER INTO AN AGREEMENT WITH REPRESENTATIVES OF THE WOOSTER EMPLOYEES ASSOCIATION REGARDING WAGES, BENEFITS AND TERMS AND CONDITIONS OF EMPLOYMENT (Sanders)
2. Second Reading – ORDINANCE NO. 2018-019
AN ORDINANCE AMENDING CHAPTER 162, MANAGEMENT BENEFITS, OF THE CODIFIED ORDINANCES OF THE CITY OF WOOSTER, OHIO AND DECLARING AN EMERGENCY (Sanders)

VII. NEW BUSINESS

1. First Reading – RESOLUTION NO. 2018-065
A RESOLUTION AUTHORIZING THE MAYOR TO AUTHORIZE THE ASSIGNMENT OF AN AGREEMENT WITH JAS, LLC FOR COMMUNITY REINVESTMENT AREA TAX INCENTIVES TO THE MEMMER HOMES GROUD LLC, A NEW OWNER, AND GILCREST SENIOR WELLNESS AND FITNESS CENTER INC, AN EMPLOYER (Ansel)
2. First Reading – RESOLUTION NO. 2018-066
A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH THE WOOSTER YMCA FOR PROFESSIONAL ADMINISTRATIVE SERVICES RELATED TO THE MANAGEMENT AND OPERATION OF THE CITY OF WOOSTER'S SWIMMING FACILITIES (Myers)
3. First Reading – ORDINANCE NO. 2018-020
AN ORDINANCE AMENDING CHAPTER 375, SNOWMOBILES, OFF-HIGHWAY MOTORCYCLES AND ALL PURPOSE VEHICLES, OF THE CODIFIED ORDINANCES OF THE CITY OF WOOSTER, OHIO AND DECLARING AN EMERGENCY (Sanders)
4. First Reading – ORDINANCE NO. 2018-021
AN ORDINANCE ALLOWING MEMBERS OF THE WOOSTER CITY COUNCIL TO PURCHASE HEALTH CARE INSURANCE BENEFITS THROUGH THE CITY OF WOOSTER (Sanders)

VIII. MISCELLANEOUS

IX. ADJOURNMENT

ORDINANCE NO. 2018-018

AN ORDINANCE AUTHORIZING THE DIRECTOR OF
ADMINISTRATION TO ENTER INTO AN AGREEMENT
WITH REPRESENTATIVES OF THE WOOSTER
EMPLOYEES ASSOCIATION REGARDING WAGES,
BENEFITS AND TERMS AND CONDITIONS OF
EMPLOYMENT

WHEREAS, representatives of the Wooster Employees Association have met and negotiated with representatives of the City administration regarding wages, benefits and terms and conditions of employment for labor, trades, technical, clerical and administrative employees; and

WHEREAS, these negotiations have produced a mutually acceptable agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. The Director of Administration is authorized to enter into an agreement with representatives of the Wooster Employees Association regarding wages, benefits, and terms and conditions of employment for labor, trades, technical, clerical and administrative employees, in accordance with the summary of terms attached. This agreement sets forth all provisions relative to wages, benefits, and terms and conditions of employment to which the parties have bargained and agreed for the specified term.

SECTION 2. This Council finds and declares that all formal actions concerning and relating to the adoption of this ordinance occurred in an open meeting of this Council or its committees, in compliance with law.

1st reading 10-15-18 2nd reading _____ 3rd reading _____

Passed: _____, 2018 Vote: _____

Attest: _____
 Clerk of Council President of Council

Approved: _____, 2018 _____
 Mayor

Introduced by: Craig Sanders

Summary of Memorandum of Understanding – 1 year WEA contract extension

The City Administration and the WEA have tentatively agreed to a one (1) year extension of the current contract. The contract that expires on December 31, 2019 would be extended until December 31, 2020. It was agreed that all other aspects of the terms of the contract remain the same as the January 1, 2017 through December 31, 2019 collective bargaining agreement.

The terms of the one (1) year contract extension are as follows:

The contract extension will run from January 1, 2020 through December 31, 2020.

Hourly Wage Rates:

1/1/2019 – 2.5% wage increase based upon a satisfactory performance evaluation

1/1/2020 - 2.5% wage increase based upon a satisfactory performance evaluation

These wage increases match those of the other two CBA's (Police and Fire).

Retirement Incentive:

When a member of the bargaining unit has completed 27 years of service with the City of Wooster, he/she will be eligible for a stipend of two thousand dollars (\$2,000.00) per year, not to exceed six thousand dollars (\$6,000.00) during the term of employment, but in no event shall any payment be made after the 36 year anniversary.

This language was removed in a previous contract, but similar language was retained in the Police and Fire contracts, as required by the fact finder.

Vacation:

Employees with at least one year of service may "cash in" accrued vacation once during any calendar year. Employees may cash-in up to ½ of their annual accrual, and must maintain a minimum balance of 10 days. The cash-in rate was increased from 90 % to 100% of their base daily/hourly rate, to match the Police, Fire and management provisions.

Severance Pay:

Upon retirement from City service, an employee with ten (10) or more years of service shall receive payment for his/her accumulated sick leave based upon the employee's rate of pay at retirement. Maximum payment shall be thirty three percent (33%) of his/her accumulated sick leave, not to exceed a total of six hundred (600) hours. Such payment shall be made only once to any employee.

This was the original language from previous contracts, and now conforms to the language in the Police and Fire contracts, which was ruled on by the fact finder.

Medical Insurance and Pharmacy Benefits:

Insurance premium rates and pharmacy benefits will remain the same for 2019 and 2020. This provision conforms insurance benefits for all City employees and the other CBA's.

WEA employees will also be eligible for a voluntary, employee funded Flexible Medical Spending Account (FSA) and Dependent Care Reimbursement Account (DCRA) option, as is available to management.

ORDINANCE NO. 2018-019

AN ORDINANCE AMENDING CHAPTER 162,
MANAGEMENT BENEFITS, OF THE CODIFIED
ORDINANCES OF THE CITY OF WOOSTER, OHIO AND
DECLARING AN EMERGENCY

WHEREAS, the Director of Administration has recommended that Section 162.03 LEAVES and Section 162.07, RETIREMENT BENEFITS be amended so that sick leave payouts and retirement stipends will be commensurate with the City's Collective Bargaining Agreements.

WHEREAS, the City of Wooster desires to offer the same employment benefits to all of its employees; and

WHEREAS, similarly situated employees pursuant to their collective bargaining agreements currently or will soon receive benefits superior to those granted in Chapter 162 of the codified ordinances.

WHEREAS, standardization of benefits aids the retention of management employees and bolsters recruitment efforts.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. That Chapter 162 of the Codified Ordinances, entitled Management Benefits, be amended at Section 162.03, LEAVES and Section 162.07, RETIREMENT BENEFITS, to read as follows:

162.03 LEAVES.

Management level employees shall be paid their full salary while on sick and vacation leaves. They shall continue to earn sick leave and vacation credit while on sick leave, injury leave, vacation leave and military leave.

(a) Sick Leave. Management employees shall earn 1.25 sick leave days for each month of service. Such sick leave credit shall be recorded in the first pay period of each month. The amount of sick leave which may be accumulated is unlimited. Employees may only use sick leave which has been previously accumulated.

(1) The previously accumulated sick leave of employees who have been separated from the public service other than through retirement may be placed to their credit upon their re-employment in public service, if re-employed within ten years. Employees who transfer from one public agency to another shall be credited with the unused balance of their accumulated sick leave upon furnishing a satisfactorily written statement signed by an appropriate official of such other public agencies stating the employees' accumulated balance from such other public agencies.

(2) A. **Upon retirement from City service,** ~~With respect to employees who retire on or before December 31, 2018, when~~ management employees with at least ten years of service with the City retire, they shall be paid thirty-three percent (33%) of their accumulated sick leave, not to exceed seventy-five (75) days. When management employees with less than ten

years of service with the City, but with ten or more years' service with the State, any political subdivision, or a combination thereof retire from active service with the City, the rate shall be reduced to twenty-five percent (25%), not to exceed seventy-five (75) days. Such payment shall be based on the employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time of the payment. As used in this section, "retirement" is limited to the point at which an employee is then eligible to receive disability or service retirement payments under any State or municipal retirement system in this State.

~~B. With respect to employees who retire on or after January 1, 2019, when management employees with at least ten years of service with the City retire, they shall be paid twenty-five percent (25%) of their accrued but unused sick leave, not to exceed three hundred sixty (360) hours. Management employees with less than ten years of service with the City, but with ten or more years' service with the State, any political subdivision, or a combination thereof retire from active service with the City, shall be paid twenty-five percent (25%) of their accrued but unused sick leave, not to exceed three hundred sixty (360) hours. Such payment shall be based on the employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time of the payment. As used in this section, "retirement" is limited to the point at which an employee is then eligible to receive disability or service retirement payments under any State or municipal retirement system in this State.~~

B.C. In the case of the death of an employee, the estate of an employee with ten or more years of service to the City shall receive payment for his/her accumulated sick leave based upon the employee's rate of pay at time of death. Maximum payment shall be as prescribed in the preceding subsection, provided that an employee who died before becoming eligible for retirement will be limited to a maximum payment calculated by multiplying the figure from subsection (a)(2) A. hereof by the fraction of the employee's total years of service divided by 30.

(3) Management employees may use sick leave for absences due to personal illness, and/or examination by an appropriate health care practitioner. Sick leave may also be used for illness of or injury to a member of the employee's family (spouse, children or employee's parents). For use of sick leave for parents of an employee, employees are limited to no more than three days per calendar year.

(4) Sick leave incentive. Management level employees who have a minimum of forty days of accumulated sick leave on the first day of the last pay period ending in the preceding year, and who increase that balance by an additional eleven days from the first day of the last pay period ending in December of the current year, shall qualify for sick leave incentive.

A. Management employees who meet the criteria shall receive an additional two and one-half day's pay on their last paycheck in December.

B. When sick leave incentive payment is made, the Mayor or his/her designee is authorized to deduct two and one-half days of sick leave credit from the employee's balance on the last day of the first pay period ending in December.

C. Sick leave used when attending funerals shall not be counted as used when calculating sick leave incentive.

(b) Injury Leave. If management employees are injured while performing their assigned duties or contract illness under such conditions and, as a result of such injury or illness are certified unable to work by a licensed physician, employees shall be compensated according to the following plan: The first one hundred twenty (120) scheduled working hours of

disability shall be drawn from accumulated sick leave. The next four hundred eighty (480) consecutive working hours of certified disability caused by the original injury or illness shall be compensated as follows: the employees will be compensated through Wage Continuation, whereby the employer will pay the employee's regular earnings in lieu of Ohio Bureau of Worker's Compensation reimbursement. In the event the employee continues to be certified as disabled and unable to return to work after having exhausted the initial four hundred eighty (480) hours of earnings paid through Wage Continuation, the employer shall pay to the employee the difference between the payment received from the Ohio Bureau of Worker's Compensation and his/her regular earnings for an additional four hundred forty (440) scheduled working hours.

(c) Family Medical Leave Act (FMLA). The City of Wooster is and will remain in compliance with respect to the FMLA regulations and requirements.

(d) Bereavement Leave. In the event of the death of an immediate family member, employees will be permitted to take up to five (5) days with full pay for purposes of dealing with matters related to death and grieving. Such leave will not be granted to employees attending a funeral during periods when, for other reasons, they are not at work, such as during vacation, holidays or illness.

(e) Personal Leave. A management level employee may request an unpaid or personal leave of absence for a period not to exceed thirty-one (31) calendar days. Request for renewal may be made only once. Award or denial of a personal leave shall be made by the Mayor and/or Director of Administration. All decisions shall be final. During any such period of personal leave employees will continue to be covered by the City's existing health care plan.

(f) Non-FMLA Medical Leave. Management employees who have exhausted both their FMLA eligibility and their accrued sick leave balance and require additional time off because of illness, may request a medical leave of absence.

(1) A medical leave is taken without pay.

(2) The employee does not earn vacation or sick leave credit while on an unpaid medical leave. The Mayor and/or Director of Administration shall continue health insurance coverage for such employee.

(3) The maximum length of time an employee may request for a non-FMLA medical leave is ninety (90) calendar days. A renewal may be awarded only once.

(g) Vacation Leave.

(1) Effective June 1, 2018 and forward, the Mayor or designee shall permit prior service with any other governmental agencies for any new management employee who is hired from such agency for purposes of computing the amount of the employee's vacation leave. A written statement signed by an appropriate official of such other governmental agency stating the employee's service time shall be provided.

(2) Management employees hired or promoted prior to June 1, 2004 shall receive vacation based on the following schedule:

<u>Years of Service</u>		<u>Vacation Days Accrued</u>
<u>At Least</u>	<u>But Less Than</u>	<u>Per Month of Service</u>
0	3	0.834 (annually, 10 days)

3	6	1.250 (annually, 15 days)
6	10	1.670 (annually, 20 days)
10		2.084 (annually, 25 days)

Upon the adoption of this section, current management employees shall convert from the previous method of annual vacation accrual to the monthly accrual thereof effective upon the first day of the month following their anniversary date. (Ord. 2004-14. Passed 6-14-04.)

(4) Management employees hired or promoted on or after June 1, 2004, shall accrue vacation based on the following schedule:

<u>Years of Service</u>		<u>Vacation Days Accrued</u>
<u>At Least</u>	<u>But Less Than</u>	<u>Per Month of Service</u>
0	8	1.250 (annually, 15 days)
8	15	1.670 (annually, 20 days)
15		2.084 (annually, 25 days)

Notwithstanding the provisions of the vacation accrual schedule in this subsection, hourly employees who are employees of the City as of the date of adoption of this section, and who are promoted on or after June 1, 2004 to a management position, and whose annual vacation accrual as a management employee would be less than the accrual to which they were entitled prior to promotion, and irrespective of whether calculated at the time of promotion or over the course of service, shall accrue vacation at the rate in subsection (g)(2) above.

(4) Management employees may not accrue vacation leave in excess of the accrual from three years of employment, as calculated in accordance with Section 162.03(g)(2) or (3), above. Any accumulated vacation exceeding that amount shall be forfeited unless the Mayor, in his/her sole discretion, has granted a waiver to the employee, in which case the employee, solely for the purpose of using such excess vacation leave, may exceed the maximum accrual for the period of the waiver, which shall not exceed six months.

(5) Time spent in military service is to be counted as service with the City when determining vacation leave, provided the employee in question was a City employee for at least 120 calendar days before entering military service.

(6) Upon separation from municipal service, employees are entitled to compensation for any unused vacation leave to their credit upon date of separation, but not in excess of the accrual from his/her last three years of employment preceding separation from employment. This payment shall be in addition to any severance pay which may be due.

(7) In case of the death of an employee, the unused accumulated vacation leave shall be paid to the deceased employee's estate.

(8) Vacation Cash-Out Option. Subject to the approval of the Director of Administration, employees will be permitted to "cash out" unused vacation time of up to one-half of their annual accrual once during any calendar year (January through December), provided that the employee must maintain a minimum balance of ten (10) vacation days. The "cash out" rate will be one-hundred percent (100%) of the employee's daily base rate.

(h) Court Leave. Employees subpoenaed to represent the City to appear before any court or called for jury duty shall be paid their regular wage. Any compensation received from the

court for jury duty or court appearance shall be submitted to the City. (Ord. 2014-05. Passed 3-17-14.)

162.07 RETIREMENT BENEFITS.

(a) Commencing January 1, 2006, when an employee has completed twenty-seven years of service, s/he will be eligible for a stipend of up to six thousand dollars (\$6,000) payable at the employee's option over a period not to exceed three years. The stipend payment(s) shall be made on the employee's anniversary date, and in no event will any payment be made after the thirty-six-year anniversary date, unless said employee's original date of hire was on or before January 1, 1972.

(b) It will be the sole responsibility of the employee to notify the Human Resources Division as to when and in what manner the payments are to be made.
(Ord. 2005-46. Passed 1-3-06.)

~~(c) This section will be repealed as of January 1, 2019.~~

SECTION 2. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its committees, in compliance with the law.

SECTION 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

SECTION 4. This Ordinance is declared to be an emergency measure necessary to the immediate preservation of the public health, peace, safety and welfare of the City, or providing for the usual daily operation of a municipal department or division, and for the further reason that prompt action is necessary to protect the public and the City; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor; provided it receives the affirmative vote of at least three-fourths of the members of the Council; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

1st reading 10-15-18 2nd reading _____ 3rd reading _____

Passed: _____, 2018 Vote: _____

Attest: _____
 Clerk of Council President of Council

Approved: _____, 2018 _____
 Mayor

Introduced by: Craig Sanders

Request for Agenda Item

Authorization for Bid

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Purchase Capital Item

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Non-Capital

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Division Administration	Meeting Date Requested 10-15-18
Project Name Chapter 162 – Management Benefits	Estimated Total Funds/Costs \$0
Is Full Amount Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If YES, three readings NOT REQUIRED N/A	
If No, How is the Purchase to be Funded?	
Description This is a request to modify the management benefits ordinance to conform individual benefits to those offered to all other City employees as defined in their respective collective bargaining agreements (CBAs). Chapter 162 currently limits retirement and severance packages upon retirement. Current sick leave payouts are 25% of accumulated sick leave, not to exceed 360 hours, for employees retiring after 1/1/2019 with at least 10 years of service. All other employees of the City with 10 years of service upon retirement receive 33% of accumulated sick leave, not to exceed 600 hours. All other employees with at least 18 years of service are also eligible for a retirement/service stipend of \$1000 per year, with a max of \$6000. This benefit is scheduled to sunset on 1/1/2019 based on current language. These provisions were taken to arbitration with the Fire union and the arbitrator determined they should stay as written. Police and WEA have been conformed to the same benefit.	
Justification / Benefits These changes will standardize benefits for all the City employees and conform management employee benefits to those defined by the CBAs, as well as help with recruiting efforts for individuals with required skills for management positions.	
Will this Project affect the City's Operating Costs These changes should have little effect on operating costs as we already budget for potential payouts, and have relatively few retirements in any given year.	
What Alternatives Exist and what are the Implications of the Alternatives Leave the ordinance the same, which will not conform benefits for all employees.	
Is this a Sole Source Bid or Non-Bid Situation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Explain The Circumstances:	
Is there a need for Suspension of the Rules or a Time Frame when this must be passed? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Note Reasons Immediate passage is not needed, but approving now would allow these provisions to be incorporated into HR processes prior to the current 1-1-2019 date in the current ordinance, and allow any employees contemplating retirement adequate time to plan ahead.	
NOTE: Emergency Clause Required if Legislative Effective Date is IMMEDIATE.	
Manager Requesting: Joel Montgomery	Date: 10/08/18
Approved for Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

RESOLUTION NO. 2018-065

A RESOLUTION AUTHORIZING THE MAYOR TO AUTHORIZE THE
ASSIGNMENT OF AN AGREEMENT WITH JAS, LLC FOR
COMMUNITY REINVESTMENT AREA TAX INCENTIVES TO THE
MEMMER HOMES GROUD LLC, A NEW OWNER, AND GILCREST
SENIOR WELLNESS AND FITNESS CENTER INC, AN EMPLOYER.

WHEREAS, this City Council, in Ordinance No. 2016-06, authorized the Mayor to enter into an agreement with JAS LLC for Community Reinvestment Area Tax Incentives, including a capital investment of up to \$1,100,000.00 for the acquisition and rehabilitation 2375 Benden Drive in order to provide space for the Gilcrest Senior Wellness and Fitness Center Inc. and the creation of at least 10 new jobs, with an abatement of real estate taxes for a period of ten (10) years; and

WHEREAS, JAS LLC seeks the approval of this Council to transfer its Community Reinvestment Area (CRA) Agreement, with all of its rights and responsibilities, to The Memmer Homes Group LLC, which became a partner to the project when it acquired and rehabilitated 2375 Benden Drive for the Gilcrest Senior Wellness and Fitness Center Inc., and to the Gilcrest Senior Wellness and Fitness Center Inc., which intends to continue employing workers at the facility; and

WHEREAS, JAS LLC and Gilcrest Senior Wellness and Fitness Center Inc. are held by the same owners, and The Memmer Homes Group LLC's participation was required in lieu of JAS LLC in order to bring the project to fruition; and

WHEREAS, all other aspects of the agreement have otherwise been met, with substantial investment having been made in rehabilitating 2375 Benden Drive, Wooster, Ohio as originally committed in the agreement, and the Gilcrest Senior Wellness and Fitness Center Inc. having exceeded the project's job creation requirements with 14 current employees.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WOOSTER,
OHIO:

SECTION 1. That the Mayor, on behalf of the City of Wooster, is authorized to enter into an amended agreement with JAS LLC, The Memmer Homes Group LLC and Gilcrest Senior Wellness and Fitness Center Inc., where the two latter will be substituted as the Enterprise, and thus eligible for the remaining CRA tax incentives. It is expressly understood that the new owner (The Memmer Homes Group LLC) and Employer (Gilcrest Senior Fitness and Wellness Center Inc.) will assume the CRA agreement as it was originally executed and as it presently exists; that the terms will remain unchanged except as to the identity of the new owner and employer as the Enterprise; and that the new owner and employer will be required to meet all of the Enterprise's obligations thereunder.

SECTION 2. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its committees, in compliance with the law.

SECTION 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

1st reading _____ 2nd reading _____ 3rd reading _____

Passed: _____, 2018 Vote: _____

Attest: _____
Clerk of Council President of Council

Approved: _____, 2018 _____
Mayor

Introduced by: Jon Ansel

JAS LLC.

593 Gates St.
Doylestown, OH 44230
(330) 658-7035
Fax (330) 658-7135

October 4, 2018

City of Wooster
C/O Jonathan Millea
538 North Market Street
Wooster, Ohio 44691

Re: Request for Transfer of CRA No. 16-001 – JAS, LLC

Dear Jonathan:

JAS, LLC currently has a community reinvestment area agreement, CRA No. 16-001 (the "CRA"), with the City of Wooster for improvements to a building located at 2375 Benden Drive, Wooster, Ohio 44691 (the "Property").

JAS, LLC respectfully requests that the City of Wooster modify and transfer the CRA to the employer operating its adult day care business on the Property, Gilcrest Senior Wellness & Fitness Center, Inc., and to the owner of the building, Memmer Hornes Group, LLC, to assume the obligations of, and receive the benefits of, the CRA.

This arrangement occurred as the project was moving forward and was necessary to make the project successful.

Very truly yours,

JAS, LLC

Annette Saeger
Member of JAS, LLC

RESOLUTION NO. 2018-066

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A CONTRACT WITH THE WOOSTER YMCA FOR
PROFESSIONAL ADMINISTRATIVE SERVICES RELATED TO
THE MANAGEMENT AND OPERATION OF THE CITY OF
WOOSTER'S SWIMMING FACILITIES

WHEREAS, it is necessary to provide for the operation of the city of Wooster's outdoor swimming pools and spray ground during the summer months, and the Mayor has determined that these facilities can be operated more efficiently by contracting with an administrative services company; and

WHEREAS, the Wooster YMCA possesses the professional expertise to provide the administrative services necessary for the management and operation of the city's swimming facilities; and

WHEREAS, this City Council has determined that prompt action is necessary to begin the process of implementing this program and the cost of such services for FY 2019 is budgeted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. The Mayor or his/her designee is authorized to enter into a professional administrative services contract with the Wooster YMCA for services related to the management and operation of the city of Wooster's swimming facilities, in accordance with specifications on file in the office of the Director of Administration.

SECTION 2. Such contract will not exceed the amounts appropriated for this project in the 2019 annual Appropriations Budget.

SECTION 3. This Council finds and declares that all formal actions concerning and relating to the adoption of this resolution occurred in an open meeting of this Council, in compliance with law.

SECTION 4. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

Introduced: _____ Passed: _____ Vote: _____

Attest: _____
Clerk of Council President of Council

Approved: _____, 2018
Mayor

Introduced by: Scott Myers

Request for Agenda Item

Authorization for Bid

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Purchase Capital Item

Non-Capital

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Division Recreation	Meeting Date Requested N/A
Project Name 2019 YMCA Pool Management Contract	Estimated Total Funds/Costs \$ 157,527.00
Is Full Amount Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If YES, three readings NOT REQUIRED	
If No, How is the Purchase to be Funded?	
Description of Request The City of Wooster will contract with the Wooster YMCA to provide Lifeguard services in 2019 at Freedlander Pool, Christmas Run Pool and Knights Field Spraypark. Additionally, the YMCA will provide guards for City sponsored special events.	
Justification / Benefits By contracting with the YMCA, the City will save time(HR processing employees) and money(PERS). All City pass holders will be able to use their passes at the Natatorium May 25 through December 31, 2019.	
Will this Project affect the City's Operating Costs This will reduce the City's operating cost.	
What Alternatives Exist and what are the Implications of the Alternatives No local alternative options. The City could elect to operate the pools, but at a higher financial amount.	
Is this a Sole Source Bid or Non-Bid Situation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Explain The Circumstances:	
Is there a need for Suspension of the Rules or a Time Frame when this must be passed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Note Reasons	
NOTE: Emergency Clause Required if Legislative Effective Date is IMMEDIATE.	
Manager Requesting: Jeff Battig	Date: November 5, 2018

2019 YMCA/City of Wooster Pool Contract Explanation

Pool Income:

2016 - \$105,838.50

2017 - \$102,669.55

2018 – \$126,996.76

Pool Attendance:

2016 – 36,450

2017 – 34,608

2018 – 53,018

Breakdown of 2019 YMCA Contract Increase:

Additional Life Guard at Freedlander and Christmas Run Pool. This was recommended by the City of Wooster in order to create a safer environment.

A second Life Guard was added for swim team, per state law.

Due to issues at Knights Spray Park, the City and YMCA recommended that an adult age(>22) attendant be hired and paid accordingly. This is needed to deal with the drug and homelessness at this facility.

We will keep Christmas Run Pool open one additional week. The City will pay ½ of the expenses and the YMCA will be responsible for ½ of the expenses.

Benefits of a 2019 Pool Pass:

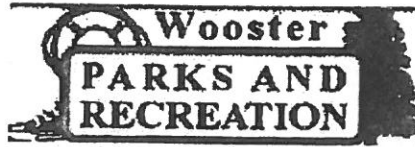
City pass holders will be permitted to use the Wooster YMCA Natatorium

Memorial weekend through December 31, 2019.

YMCA/City of Wooster Family Swim Night-TBA

Christmas Run Pool will remain open one extra week.

the



YMCA Of Wooster
Partnership to Manage City Pools
2018

	Without Additional Guard at Spray Ground
Freedlander	\$ 43,825
Christmas Run	\$ 30,000
Knight Field	\$ 6,345
Preseason	\$ 2,150
Postseason	\$ 1,140
Swim Meets	\$ 1,640
Backwashing	\$ 600
Training	\$ 1,300
Director	\$ 8,200
Taxes	\$ 14,280
Insurance	\$ 1,200
Management Fee	\$ 28,320
Drug Testing	\$ 2,000
Total	<u>\$ 141,000</u>

Special Events:
\$15 Per Employee Needed Per Hour



**YMCA of YMCA OF WOOSTER
Partnership to Manage City Pools
2019**

Freedlander	\$46,397
Christmas Run	\$33,200
Knights Field	\$ 8,345
Preseason	\$ 2,150
Postseason	\$ 1,140
Swim Meets	\$ 1,640
Backwashing	\$ 600
Training	\$ 1,300
Director	\$ 8,200
Taxes	\$16,475
Insurance	\$ 1,200
Management Fee	\$33,780
Drug Testing	\$ 2,100

Total \$156,527

Special Events: \$15 per Employee needed per hour

Additions to the 2019 contract:

- An additional guard at both pools from 12-4 Monday-Friday, to make the pool safer for our patrons.
- Second guard during swim team practice, per state law, 7:30-12 at Freedlander
- Increased Wage at Knights Field to hire older staff person to deal with drug issues/criminal issues.
- ½ of the cost to keep Christmas Run open and extra week. (The week before WCS begins)

ORDINANCE NO. 2018-020

AN ORDINANCE AMENDING CHAPTER 375,
SNOWMOBILES, OFF-HIGHWAY MOTORCYCLES AND
ALL PURPOSE VEHICLES, OF THE CODIFIED
ORDINANCES OF THE CITY OF WOOSTER, OHIO AND
DECLARING AN EMERGENCY

WHEREAS, the City of Wooster desires to allow the operation of golf carts on roadways in the City of Wooster with a posted speed limit of under thirty-five miles per hour; and

WHEREAS, the Ohio Revised Code allows for such operation at the discretion of local jurisdictions.

WHEREAS, allowing the use of golf carts will benefit the residents of the City of Wooster.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. That Chapter 375 of the Codified Ordinances, entitled, SNOWMOBILES, OFF-HIGHWAY MOTORCYCLES AND ALL PURPOSE VEHICLES shall be amended to include Section 375.09 OPERATION OF UNDER-SPEED VEHICLES and further be amended at Section 375.01, DEFINITIONS, and Section 375.06, REGISTRATION OF VEHICLES, to read as follows:

375.01 DEFINITIONS.

As used in this chapter:

(a) "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners or caterpillar treads. (ORC 4519.01(A))

(b) "All-purpose vehicle" means any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all season vehicles, mini-bikes and trail bikes. "All-purpose vehicle" does not include a utility vehicle as defined in Ohio R.C. 4501.01 or any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under Ohio R.C. Chapter 4503 or Chapter 4561, and any vehicle excepted from definition as a motor vehicle by Section 301.20 of this Traffic Code. (ORC 4519.01(B))

(c) "Owner" means any person, firm or corporation, other than a lienholder or dealer, having title to a snowmobile, off-highway motorcycle, or all-purpose vehicle, or other right to the possession thereof. (ORC 4519.01(C))

(d) "Operator" means any person who operates or is in actual physical control of a snowmobile, off-highway motorcycle or all-purpose vehicle.

(e) "Limited access highway" or "freeway" means a highway especially designed for through traffic and over which abutting property owners have no easement or right of access by reason of the fact that their property abuts upon such highway, and access to which may be allowed only at highway intersections designated by the Ohio Director of Transportation. (ORC 5511.02)

(f) "Interstate highway" means any part of the interstate system of highways as defined in subsection (e), 90 Stat. 431 (1976), 23 U.S.C.A. 103, and amendments thereof.

(g) "Off-highway motorcycle" means every motorcycle, as defined in Ohio R.C. 4511.01, that is designed to be operated primarily on lands other than a street or highway. (ORC 4519.01)

(f) "Under-speed vehicle" means a three- or four-wheeled vehicle, including a vehicle commonly known as a golf cart, with an attainable speed on a paved level surface of not more than twenty miles per hour and with a gross vehicle weight rating less than three thousand pounds. (4501.01)

375.06 REGISTRATION OF VEHICLES.

(a) Except as provided in Ohio R.C 4519.02(B), (C) and (D), no person shall operate any snowmobile, off-highway motorcycle, or all-purpose vehicle unless the snowmobile, off-highway motorcycle, or all-purpose vehicle is registered and numbered in accordance with Ohio R.C. 4519.03 and 4519.04.

(b) Any vehicle owner who wishes to operate an under-speed vehicle on the public streets or highways must submit the vehicle to an inspection conducted by Wooster Police Department that complies with inspection requirements established by the Department of Public Safety under section 4513.02 of the Revised Code, successfully pass the required vehicle inspection, register the under-speed vehicle in accordance with Chapter 4503 of the Revised Code, and title the under-speed vehicle in accordance with Chapter 4505 of the Revised Code

(c)(b) Except as otherwise provided in this subsection, whoever violates subsection (a) of this section shall be fined not more than twenty-five dollars (\$25.00). If the offender previously has been convicted of or pleaded guilty to a violation of subsection (a) of this section, whoever violates subsection (a) of this section shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). (ORC 4519.02)

375.09 OPERATION OF UNDER-SPEED VEHICLES

(a) No person shall operate an under-speed upon any street or highway except as follows:

(1) Upon a street or highway having an established speed limit not greater than thirty-five miles per hour and in accordance with Section 375.06 of this code.

(b) This section does not prohibit either of the following:

(1) A person operating an under-speed by proceeding across an intersection of a street or highway having a speed limit greater than thirty-five miles per hour;

(c) Except as otherwise provided in this division, whoever violates division (a) of this section is guilty of a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

SECTION 2. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its committees, in compliance with the law.

SECTION 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

SECTION 4. This Ordinance is declared to be an emergency measure necessary to the immediate preservation of the public health, peace, safety and welfare of the City, or providing for the usual daily operation of a municipal department or division, and for the further reason that prompt action is necessary to protect the public and the City; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor; provided it receives the affirmative vote of at least three-fourths of the members of the Council; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

1st reading _____ 2nd reading _____ 3rd reading _____

Passed: _____, 2018 Vote: _____

Attest: _____
Clerk of Council

President of Council

Approved: _____, 2018

Mayor

Introduced by: Craig Sanders

ORDINANCE NO. 2018-021

AN ORDINANCE ALLOWING MEMBERS OF THE
WOOSTER CITY COUNCIL TO PURCHASE HEALTH
INSURANCE BENEFITS THROUGH THE CITY
OF WOOSTER.

WHEREAS, Section 2.03 of the Charter of the City of Wooster provides that compensation for City officials and employees shall be set by ordinance of Council; and

WHEREAS, members of the Wooster City Council are determined to be City officials as outlined Section 2.03 of the Charter of the City of Wooster; and

WHEREAS, compensation, as outlined Section 2.03 of the Charter of the City of Wooster includes health insurance benefits; and

NOW, THEREFORE, be it ordained by the Council of the City of Wooster, Ohio:

SECTION 1. Members of the Wooster City Council may enroll in the City's health insurance program subject to the terms and conditions of the Medical Summary Plan Document. This program does not include separate dental and vision insurance.

SECTION 2. Members of Wooster City Council participating in the City's health insurance program shall pay one hundred percent (100%) of the calculated self-pay premium for the coverage extended to the member of Council and his or her dependents.

SECTION 3. Members of Wooster City Council participating in the City's health insurance program are required to pay the full premium by the first day of each month. Failure to pay the full premium by the first day of each month will result in termination of benefits. Terms of reinstatement are covered by the Medical Summary Plan Document.

SECTION 4. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its Committees, in compliance with the law.

SECTION 5. This Ordinance shall take effect and be in full force from and after the earliest date allowed by law.

1st reading: _____ 2nd reading: _____ 3rd reading: _____

Passed: _____, 2018 Vote: _____

Attest: _____
 Clerk of Council President of Council

Approved: _____, 2018 _____
 Mayor

Introduced by: Craig Sanders

MEMORANDUM

TO: Wooster City Council
Wooster City Administration

FROM: Kevin Gibbons, Deputy Director of Law

RE: Ordinance 2018-021: Health Care Coverage for Members of City Council

DATE: November 2, 2018

The Laws & Ordinances Committee has requested an ordinance that would allow members of the Wooster City Council to purchase health care coverage through the City of Wooster. The legislation has been written to require Council members to pay the calculated self-pay premium for health care¹. This is the same premium that was previously offered to Council members prior to the City's determination that offering such coverage required Council legislation. However, as discussed below, this part of the ordinance may be superseded by federal law.

The City Administration reviewed this matter several months ago and concluded that if members of Council were to access the City's health care it could create several unintended consequences. Additionally, the City's Health Plan Broker outlined several concerns related to offering health care to members of Council (see Chapman & Chapman letter). It is for these reasons the City Administration did not proposed such legislation.

This ordinance involves complex issues of federal regulatory law—and a detailed analysis could take several weeks to complete. However, despite the complexity we have been able to determine some of the potential legal ramifications regarding this proposed ordinance.

If the Council votes for health care—then the City's Health Care Plan Document will have to be rewritten to include them. There is no designation of "elected officials" under the ACA (or other federal law). Health care plans are designed for employees. Which raises the question: Are elected officials (such as members of Council) considered employees under the ACA?

There is no clear answer regarding whether elected officials are considered employees of the governmental agency from which they hold their office. Some federal and state agencies (and laws) classify elected officials as employees—some do not. Among those agencies that classify elected officials as employees are the IRS, Immigration and Naturalization, and the Ohio Bureau of

¹ The calculated self-pay premium is the total of a full-time employee's premium and the additional amount the City contributes on behalf of each participating employee.

Workers' Compensation. For purposes of political subdivision tort liability, R.C. 2744.01 considers elected officials to be employees.

The ACA references IRS regulations that state a common law definition is to be used to determine who is an "employee." IRS bulletins state that elected officials are employees under the common law. Based on this it is most likely that Council members would be considered "employees" for purposes of the ACA.

It is generally accepted that members of the Wooster City Council work less than 30 hour per week.² If the City's Plan Document is changed to include members of City Council, then the terms of the Plan will have to be rewritten to offer health care coverage to: 1) employees (as defined by the ACA and IRS) who, 2) work less than 30 hours a week.

Once the Plan Document is rewritten to offer health care to some employees who work under 30 hours a week (members of City Council)—it seems certain that the City will be required under the ACA to offer health care coverage to all employees who work under 30 hours a week.

Anti-discrimination clause.

Under the ACA self-insured group health plans (such as the City's) must satisfy nondiscrimination rules. These rules require some measure of parity between higher-paid employees, and non-highly paid employees. The rule holds that an employer can charge higher-paid and lower-paid employees the same premium. An employer can also charge higher-paid employees a larger premium than lower-paid employees. However, an employer cannot charge lower-paid employees a larger premium than higher-paid employees.

If legislation is passed allowing Council Members to participate in the City's health care coverage—such coverage will likely have to be extended to all part time employees. And under the ACA's anti-discrimination clause the City will not be able to charge higher premiums (such as the calculated self-pay premium) to part-time employees. The likelihood is that part-time employees could only be charged the same amount paid by full-time employees.

There is nothing in law to indicate that the proposed ordinance—mandating Council members to pay the higher calculated self-pay premium—would be valid. Under the preemption doctrine it is unlikely that the provisions of a municipal ordinance could take precedence over a federal statute. Therefore, members of City Council who participate in the City's health care

² If members of Council worked more than 30 hours a week they would already be eligible for City health care under the terms of the ACA.

coverage might be limited to only paying the same rate paid by full-time employees for their respective plans as they are paid less than the City's full-time employees.

Given this scenario, Chapman and Chapman estimates the cost of providing members of City Council and part-time employees with health insurance will be between \$400,000 and \$450,000 per year. According to the City Administration, this would dramatically affect the organizational structure and operations. The Administration concludes that utilizing part-time employees might no longer be cost-effective and could lead to them being replaced with full-time employees. The Administration estimates that it would take 4-5 full-time employees to replace the part-time workforce. This could result in an additional operational cost to the City of \$400,000 per year. Given the scenario outlined above, the total operational cost increase to the City of this ordinance could approach \$850,000 per year.

Lastly, Attorney William Hanna's opinion (see attached) is that Council has the legal authority to pass an ordinance to obtain City health care coverage during their current term. This is because health care would fall under the category of "compensation" and not "salary" as outlined in the City Charter. However, Attorney Hanna did not opine as to whether such an ordinance would be violative of the Charter's provision regarding the Compensation Commission. Given that the Commission only makes a "recommendation"—it seems that Council could alter their compensation even without the input of the Commission. There is case law that states a city council can alter their compensation during their current term if the city charter permits it. Attorney Hanna opines that the Wooster Charter contains such language (see attached).

The implications of this ordinance involve complex and wide-ranging issues involving federal regulatory health care law that is beyond the experience of most attorneys. It is strongly recommended that outside counsel be engaged to render a more detailed legal analysis regarding this ordinance.



Robert F. Breneman, Mayor

CITY OF WOOSTER
538 N. Market Street
P.O. Box 1128
Wooster, Ohio 44691-7082

Joel Montgomery, PE
Director of Administration
Phone (330) 263-5244
Fax: (330) 263-5247
Email: jmontgomery@woosteroh.com

July 27, 2018

Mr. Scott Myers
421 Holmes Blvd.
Wooster, Ohio 44691

Dear Mr. Myers,

Last year during a compliance audit with our Plan Broker, they advised that due to the language in the Plan Document we were required to inform Council Members of their ability to participate in City provided health care coverage. This determination was based upon language included in the Plan, but had never been utilized or undergone legal review for Ordinance and/or ACA compliance. In October 2017, you received notification you were eligible to participate in the City of Wooster's Health Plan, per the medical plan document. If selected, you would be responsible for 100% of the medical insurance premium cost per month. You notified the City in November 2017 that you were enrolling in the coverage effective January 2018.

Per our records, you are the first City Council member who has elected to participate in the City's Health Plan. In order to process your enrollment several items required clarification, therefore, the insurance broker and outside legal counsel reviewed the administration of the benefits to ensure the City was in compliance.


Through the implementation process and legal compliance review, our legal counsel advised us that we do not have the legal authority to offer City Council members insurance coverage through the City. Even though our plan document states City Council members are eligible to participate, we are also required to have legislation passed by City Council authorizing us to offer City Council members the benefit of health insurance. After several months of researching, it has been determined that such an ordinance does not currently exist.

This letter is notification the City did not have the authority to offer the health insurance coverage to City Council members and you have been receiving a benefit that was not authorized by City Council or the City Charter. As a result, your medical insurance coverage will terminate sixty (60) days from today (October 2018), provided you continue to pay the premium each month through October 2018. Since you were receiving these benefits in error, you will not be eligible for COBRA.

We apologize for any inconvenience this may have caused. As a servant to the public, I am sure you agree that we have an obligation to the citizens of the City of Wooster to ensure all funds are being spent with appropriate authority and approval.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Joel Montgomery
Director of Administration
City of Wooster

ATTORNEY-CLIENT PRIVILEGE

TO: Joel Montgomery, Director of Administration
CC: Jeanette Wagner, Director of Human Resources
FROM: Kevin Gibbons, Deputy Director of Law
RE: City Provided Health Care for City Council Members
DATE: July 19, 2018

The City's Plan Document for Health Care is created in consultation with our Third Party Administrator, Mutual Health Service (MHS) and our stop-loss insurance carrier which frequently changes. This plan outlines the obligations and responsibilities of the City of Wooster in providing health care coverage for qualified City employees. The Plan Document includes language that elected Council Members and the Mayor are eligible to participate in the Plan without meeting the requirement of having to work at least 30 hours per week—a requirement that applies to City employees.

Last year the City was informed by our Plan Broker, Chapman and Chapman, that due to the language in the Plan Document we were required to inform Council Members of their ability to participate in City provided health care coverage. There was no need to inform the Mayor regarding this provision as he is provided health care coverage, to the same extent as all other full-time City employees, as authorized by Ordinance No. 1991-1 (see Exhibit A). Upon the notification to the members of City Council, Councilman Scott Myers elected to participate in the plan. Councilman Myers was required to pay an amount equal to what the City pays to cover City employees for the same coverage.

After Councilman Myers obtained health care coverage our Plan Broker outlined several reasons why medium to small municipalities do not provide health care coverage to member of city council. (See Exhibit B). The City contacted outside legal counsel to review our Plan and

administration of benefits to ensure that the City was authorized to offer benefits to Council Members. As noted above, health care coverage for the Mayor of the City of Wooster is authorized by Ordinance No. 1991-1. Despite a thorough review of legislation passed by the Wooster City Council for the past several decades, we could not find any Ordinance that authorizes providing health care coverage for a member of City Council.

The City engaged the services of attorney William Hanna from the firm of Walter-Haverfield to research this matter. Attorney Hanna has done a deep-dive into this issue and opines that because no ordinance has been passed that authorizes the City to provide health care benefits to Council Members the City has no authority to provide such benefits or to adopt any version of the Plan to provide for them. He further advises that the health care benefits provided to Councilman Myers should be discontinued unless or until City Council passes an ordinance that authorizes them (see Exhibit C).

Upon review, I concur with Attorney Hanna's analysis and his recommendation. Inasmuch as Councilman Myers accepted health care coverage in good faith, there is case-law that holds he should not be required to reimburse the City for the benefits that he has received thus far. Absent immediate action from City Council, Councilman Myers should be given a reasonable amount of time to obtain health care coverage on the open market, at which time his coverage needs to be discontinued.

ORDINANCE NO. 1991-1

AN ORDINANCE AMENDING ORDINANCE NO. 1986-22, AN ORDINANCE ESTABLISHING THE SALARIES OF ALL ELECTED OFFICIALS OF THE CITY OF WOOSTER FOR TERMS BEGINNING ON OR AFTER JANUARY 1, 1988

WHEREAS, Section 2.03 of the Charter of the City of Wooster requires salaries of elected officials to be set by Ordinance of City Council at least five days prior to the last day for filing for candidacy, and

WHEREAS, Ordinance No. 1986-22 established salaries for elected officials for terms of office ending in 1991 and 1993, but did not provide for succeeding terms of office for such officials.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WOOSTER, OHIO:

SECTION 1. That Ordinance No. 1986-22 is hereby amended to read as follows:

A. That the salaries of President of Council and Council Members for terms of office beginning January 1, 1988 and ending December 31, 1991, and for each succeeding term, shall be established as follows:

President of Council:

From January 1, 1988

through December 31, 1989

\$3,200.00 Annually

Beginning January 1, 1990

\$3,800.00 Annually

Council Members:

From January 1, 1988

through December 31, 1989

\$3,000.00 Annually

Beginning January 1, 1990

\$3,600.00 Annually

B. That the salaries of Council Members for terms of office beginning January 1, 1990 and ending December 31, 1993, and for each succeeding term, shall be established as follows:

Council Members:

Beginning January 1, 1990

\$3,600.00 Annually

C. That the salary of the Mayor of the City of Wooster, for the term of office beginning January 1, 1988 and ending December 31, 1991, and for each succeeding term, shall be established as follows:

EXHIBIT

A

Beginning January 1, 1988
Through December 31, 1989

\$44,000.00 Annually

Beginning January 1, 1990

\$48,000.00 Annually

SECTION 2. That the Mayor shall receive health and hospitalization insurance coverage to the same extent as provided all other full-time City employees, and any increase in the cost of such coverage during the term of office beginning January 1, 1988 through December 31, 1991, and for each succeeding term, is hereby authorized.

SECTION 3. That the salaries of all elected officials of the City of Wooster shall be payable bi-weekly.

SECTION 4. This Amended Ordinance shall take effect and be in full force from and after the earliest date allowed by law.

Passed: January 7, 1991

William A. Pappas
President of Council

Attest: Shirley Stanley
Clerk of Council

Approved: 1/8, 1991

J. C. Brennan
Mayor

Introduced by: Stanley Beers



Employee Benefit Consulting
Retirement Plans
Insurance Brokerage

Since Eighteen Eighty-Six

Aaron Marinelli, President

March 9, 2018

City of Wooster
City Administration
538 North Market Street
Wooster, Ohio 44691

Dear City of Wooster Administration,

The current policy at the City of Wooster covers all City Council Members under the self-funded plan at the City. We typically see this type of policy in much larger entities where the full-time status and wages of council members are commensurate with those of the general employee population.

Some of the reasons why municipalities, especially those of medium to small size, are as follows:

1. Reduction of liability – Each member (employee and/or dependent) on the plan carries with him or her a finite liability to the city of \$85,000 per member per year in the year the high claim first occurs and a possible additional supplement or laser liability to the city with catastrophic claims in subsequent years following the initial claim occurrence.
2. Prevent unbalanced benefit to pay ratios – For most organizations there are standard and acceptable ratios of benefits to pay. In virtually all cases (specific to health insurance), the numerator (cost of health insurance) divided by the denominator (employee pay) is equal to or less than 25%. In cases such as Wooster's council member coverage, there is a significantly unbalanced ratio of approximately 130%.
3. Annual hours worked – The ACA set a standard in 2010 that, again in virtually all cases we see, is adhered to by the middle market (employers similarly sized to the City of Wooster) for the offer of health insurance. The standard is that health insurance coverage is offered to full-time permanent employees working 30 hours or more per week. Acknowledging that there are duties performed by council people outside of normal office hours (which are approximately 96 hours per year), the 30 hours per week standard is typically not met by council people in small to middle sized cities (even when we include activities outside of office hours).

We have discussed this subject on multiple occasions, but wanted to memorialize the conversations in writing for the benefit of any future dialogues regarding this matter. We are available any time to discuss this or any other matter.

Best,

Aaron Marinelli
Chapman and Chapman

2307 E. Aurora Road, Suite B-13, Twinsburg, OH 44087 ♦ www.chapmanandchapman.com
440.287.7596 ♦ 888.215.2957 Toll Free ♦ 330.405.3399 Fax

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Chapman & Chapman, Inc. is not affiliated with Kestra IS.



CLIENT MEMORANDUM

-- PRIVILEGED & CONFIDENTIAL --

To: Kevin Gibbons, Deputy Law Director, City of Wooster
From: William R. Hanna, Esq. Direct Telephone: (216) 928-2940
Email: whanna@walterhav.com
Date: July 18, 2018
RE: Health Care Benefits Available to Members of City Council and the Mayor

QUESTION PRESENTED

Is the City of Wooster authorized to provide health care benefits to City Council members?

SHORT ANSWER

Because no ordinance of Council provides that Council members are eligible to receive health care insurance benefits, the City is not authorized to provide those benefits. However, a Council Member who has received such benefits in good faith would not be required to repay them.

FACTUAL BACKGROUND

1. The City's Self-Funded Health Care Benefits Plan.

The City operates a self-funded health care benefits plan (the "Plan"). The City serves as the Plan Administrator.

The current Plan first became effective on January 1, 2006, and was most recently revised on March 13, 2018. It contains a provision that hourly requirements do not apply to the eligibility of Council Members and Mayor for the City, who are eligible to participate in the Plan without hourly requirements.¹ Generally, employees pay their premiums with pre-tax dollars. The Mayor is covered under the Plan pursuant to ordinance, as described herein.

In late 2017, for the first time, a Council Member elected coverage under the Plan, to commence in 2018. This election presented practical and administrative concerns because Council Members are not City employees, and do not earn enough money in this part-time role to cover their share of the premiums through pre-tax payroll contributions.

The City has requested a legal opinion concerning its authority to provide health insurance benefits to Council Members.

¹ It is not clear when Elected Council Members first became eligible for health care benefits under the Plan. A redline version of the Summary Plan Description depicting revisions effective March 13, 2018 shows that "Elected Council Members" were eligible to participate in the Plan in the version of the Plan effective on January 1, 2015.



2. **Overview of Relevant Charter and Codified Ordinance Provisions.**

- (a) Section 2.03 of the City Charter sets forth the method by which the City may establish compensation and set salaries for elected officials.

Section 2.03 of the Charter authorizes the City to establish “compensation” for “City officials” and set “salaries” for “elected officials:”

SECTION 2.03. COMPENSATION AND BONDS.

Compensation and bonds for City officials and employees shall be established by ordinance of Council. This does not preclude the City Administration's negotiating with City employee groups regarding wages and fringe benefits. Salaries of elected officials for the ensuing term shall be set at least five days prior to the last day for filing candidacy and may not be changed during the term.

Commencing on or about January 1, 2011, and every four years thereafter, Council, in consultation with the Mayor, will appoint a Compensation Commission consisting of nine resident electors who will be charged with reviewing and making recommendations to the Mayor and Council of the amounts to be paid the Mayor and members of Council. No more than five members of the Compensation Commission shall be of the same political party.

(Emphasis added). The Charter does not define “compensation,” “City official,” “salaries,” or “elected officials.” However, in Section 7.02 of the Charter, the term “elected officers” is defined as “all persons, legislative and executive, who by the terms of this Charter are required to be elected by vote of the electors.”

- (b) The Codified Ordinances do not require the City to provide health care benefits to Council Members or the Mayor.

Nothing in the Codified Ordinances requires the City to provide health care benefits to Council Members or the Mayor. Section 162.02 of the Codified Ordinances is the only provision of the Codified Ordinances which explicitly addresses health care benefits. Specifically, Section 162.02 allows “Management level” employees to receive health insurance:

Management level employees may enroll in the City's health insurance program subject to the terms and conditions established by the Mayor. Such program may include medical, dental, vision, disability and/or life insurance coverages.

Section 162.09 lists the City’s “Management positions.” No elected official (including Council and Mayor) is included in the list of management positions authorized to receive health care benefits from the City under this section of the Codified Ordinances.

- (c) Ordinance No. 1987-13 established that certain employees were eligible to receive fringe benefits, but did not address Council Members or the Mayor.

On February 17, 1987, the City Council passed Ordinance No. 1987-13. Ordinance 1987-13 enacted a new Chapter 163 of the Codified Ordinances, which established the fringe benefits available to part-time, seasonal, temporary, special, and auxiliary employees.

Ordinance 1987-13 does not specifically define who is a part-time, seasonal, temporary, special, or auxiliary employee. Instead, employees covered by Chapter 163 are "...those employees listed on the Attachment of the Annual Salary and Wage Ordinance entitled 'Temporary, Seasonal, and Part-time Employees.'" Ordinance No. 1987-13.

Although I have not reviewed the attachments to the Annual Salary and Wage Ordinances referenced in Ordinance 1987-13 or the Annual Salary and Wage Ordinance in effect during the current Council Members' respective terms of office, I understand that Council Members are not treated as "employees" under Chapter 163 of the Codified Ordinances. Rather they are "elected officers" and "elected officials" for whom salary and compensation are established, pursuant to the Charter, by ordinance.

- (d) Ordinance No. 1991-1 requires the City to provide health care benefits to the Mayor but not to Council Members.

Ordinance No. 1991 establishes the "salaries" of the President of Council and Council Members for terms of office beginning January 1, 1988 and ending December 31, 1991, and for each succeeding term. Significantly, Section 2 of Ordinance No. 1991-1 provides that "[T]he Mayor shall receive health and hospitalization insurance coverage to the same extent as provided all other full-time City employees, and any increase in the cost of such coverage during the term of office beginning January 1, 1988 through December 31, 1991, and for each succeeding term, is hereby authorized." Ordinance No. 1991-1 contains no language purporting to provide health and hospitalization insurance coverage for any Council Member.

It is my understanding that the City has not passed any ordinance repealing Ordinance 1991-1, including Section 2 of Ordinance No 1991-1. Accordingly, the City is currently required to provide health care benefits to the Mayor.

- (e) Ordinance No. 2015-22 establishes the current salary of the Mayor.

On July 6, 2015, the City Council passed Ordinance No. 2015-22, which established the salary of the Mayor. Nothing in Ordinance 2015-22 addresses health care benefits available to the Mayor in any way. Ordinance 2015-22 contains no language repealing Ordinance No. 1991-1 or any other ordinances in conflict with Ordinance No. 2015-22.

- (f) Ordinance No. 2015-21 establishes the current salaries of City Council Members.

Also on July 6, 2015, the City passed Ordinance No. 2015-21, which established the salaries of City Council Members. Notably, and despite the fact that the Plan allowed for Council Members to be eligible to participate in the Plan, nothing in Ordinance No. 2015-21 authorized

the City to provide health care benefits to Council Members.² Instead, Ordinance No. 2015-21 simply establishes the annual “salary” payable to each Council Member, and incorporates by reference the report of the Compensation Commission.

LEGAL ANALYSIS

3. Salaries and Compensation for Elected City Officials Under the City Charter.

As indicated above, Section 2.03 of the Charter authorizes the City to establish “compensation” for City officials (and employees) and to set “salaries” for elected officials:

SECTION 2.03. COMPENSATION AND BONDS.

*Compensation and bonds for City officials and employees shall be established by ordinance of Council. This does not preclude the City Administration's negotiating with City employee groups regarding wages and fringe benefits. Salaries of elected officials for the ensuing term shall be set at least five days prior to the last day for filing candidacy and may not be changed during the term. *** (Emphasis added).*

A plain reading of Section 2.03 makes clear that, in order for the City to provide health care benefits to Council Members, then such benefits had to be authorized as: (1) “Compensation” for “City officials” through an ordinance of Council, which could be passed at any time and without limitation; or (2) “salaries” of “elected officials” for the ensuing term, which must be set prior to the term and cannot be changed in-term.

- (a) An in-term change in “compensation” of an elected official is permitted under the City Charter and Ohio law.

The analysis of the issue of health benefits for Council members requires an understanding of Section 2.03 of the Charter, which is not straightforward. That Charter section distinguishes City officials from employees, and addresses setting the compensation for such officials and employees, which may be done by ordinance of Council at any time. It then addresses the establishment of the “salaries” for elected officials, which must be done prior to the deadline for declaring candidacy for an elected position. The salary thus set cannot thereafter be changed during the ensuing term of office.

Section 2.03 appears to treat “compensation” differently from “salaries,” without specifically defining either term. A distinction between compensation and salary is common in the world of employment law, where compensation is typically understood to include base salary or wages, *together with* other items of compensation such as insurance, retirement plans, and

² I am aware of no specific Ordinance passed by Council Members which specifically authorizes the City to designate Council Members as eligible for health care benefits under the Plan. In the absence of such an Ordinance, and/or an Ordinance authorizing the renewal or adoption of the March 13, 2018 revisions to the Plan, it is not clear that the City ever had the authority to include or keep Council Members eligible to receive health care benefits under the Plan.

other fringe benefits. This understanding is also consistent with Ohio Ethics Commission Opinion 91-007 and 1984 Ohio Attorney General Opinion No. 84-036, wherein the subject of OPERS “pick-up” methods for employee contributions to the state public employees’ retirement system was discussed. Both opinions call out the fact that the “pick-up in lieu of salary increase” method, where the employer pays the employees’ retirement contributions *in addition to* the salaries employees are receiving, constitutes the provision of a *fringe benefit* to employees *in addition to salary*, and represents *compensation* to the employees.

In contrast to the City Charter, Section 731.07 of the Ohio Revised Code establishes a general rule governing the salary of municipal elected officials under state law:

The salary of any officer of a city shall not be increased or diminished during the term for which he was elected or appointed. This section does not prohibit the payment of any increased costs of continuing to provide the identical benefits provided to an officer at the commencement of his term of office.

While some case law discusses salary and compensation as synonymous for the purposes of interpreting Revised Code provisions regarding ethical considerations—see, e.g. *Hubbard v. Defiance*, 2013-Ohio-2144, at paragraph 64 (3rd Dist. 2013)—the language of the operative statutes is clearly distinguishable from the language of Wooster’s Charter.

Moreover, a chartered municipality may vary from the prohibitions of R.C. 731.07 and make in-term changes to salary or compensation of an elected official. *Hubbard*, 2013-Ohio-2144; Ohio Ethics Op. No. 1991-007 *citing to Village of Bellville v. Beal*, 7 Ohio App.3d 291 (Richland County 1982); 1983 Ohio Op. Att’y Gen. No. 83-036; 1980 Op. Att’y Gen. No. 80-002. See also *Northern Ohio Patrolmen’s Benevolent Association v. City of Parma*, 61 Ohio St. 2d 375 (1980) (non-chartered, as well as chartered municipalities may, pursuant to Ohio Const. art. XVIII, § 3, enact an ordinance governing its employees’ salaries, even though the ordinance is at variance with state statute.); *Loux v. City of Lakewood*, 120 Ohio App.45 (8th Dist. 1963); accord Ohio Ethics Op. No. 1991-007 and 1980 OAG Op. No 80-002.

Under Section 2.03 of the Wooster Charter, there are no restrictions on when Council may change the “compensation” of employees and City officials. The ordinary meaning of the term “City officials” would encompass elected officials, defined as “elected officers” under Section 7.02 of the Charter, as well as non-elected City officials. Thus the Charter establishes that Council may establish *compensation* of Council, by ordinance, regardless of whether a change in compensation will take place in-term. The *salary* of an elected official including a Council Member, however, cannot be changed during a term of office, under the Charter.

The Charter directly conflicts with R.C. §731.07’s prohibition against in-term changes in compensation to elected officials. When a municipal charter expressly conflicts with a parallel state law in a matter of local self-government, the charter provision prevails. *State ex rel. Lightfield v. Indian Hill*, 69 Ohio St.3d 441 (1994); see also *Hubbard*, 2013-Ohio-2144, at paragraph 77 (holding that, with respect to a municipal charter provision relating to compensation increases and decreases to city council members, the court “...must presume that the charter’s drafters knew the general law (R.C. 731.07) on this issue and consciously deviated

from it.”). Accordingly, in interpreting Charter Section 2.03, it is presumed that the drafters knew the general law and consciously deviated from it to ensure that changes in “compensation” payable to Council Members or the Mayor could be made in-term.

- (b) The Salaries for Elected Officials were Set by Ordinance No. 2015-21 and did not provide for health coverage.

Even if health care benefits were considered to be salaries under Section 2.03 of the Charter rather than a fringe benefit element of compensation, then Ordinance No. 2015-21 makes clear that Council Members are not entitled to health coverage. Ordinance 2015-21 set “salaries” for Council Members and did not specifically provide for them to be eligible for health care benefits. And no ordinance prior to or subsequent to Ordinance 2015-21 has authorized the provision of health care benefits to Council Members either

Thus, Section 2.03’s prohibition against in-term changes in salary is not implicated by the present facts and the City would not violate this portion of the Charter if it discontinued health care benefits payable to a Council Member.

4. The City cannot recover past health care benefits paid to Council Members.

Although the City has paid health care benefits to a Council Member without an ordinance authorizing it to do so, the City cannot recover any past health care benefits paid to the Council Members. In *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402 syllabus, paragraph one (1996), the Ohio Supreme Court instructed: “[a] public official who accepts compensation contrary to statute is under no legal duty to repay the compensation where it is subsequently determined that the official received the compensation in good faith and under color of law.”

Because the Council Member currently receiving health care benefits under the Plan accepted those benefits based upon the belief that coverage was available under the Plan, the Council Member accepted the compensation in good faith and under color of law, and the City cannot bring an action to recover those benefits received from the Council Member.

5. The City is authorized to provide health care benefits to the Mayor.

As discussed, Section 2.03 of the Charter authorizes the City to establish compensation for City officials and set salaries for elected officials. Ordinance No. 1991-1 authorized the City to provide health care benefits to the Mayor for each succeeding term of office. The provision of Ordinance 1991-1 establishing that the Mayor should receive health care benefits remains in effect today. Thus, the Mayor is currently entitled to receive health care benefits, without further action of Council.

CONCLUSION

Because no ordinance has been passed that authorized the City to provide health care benefits to Council Members, the City was without authority to provide such benefits, or to adopt any version of the Plan that provided for them. Thus, the benefits should be discontinued unless or until Council passes an ordinance that authorizes them. An ordinance authorizing fringe

benefit compensation for Council could be adopted at any time and could even apply in-term, although the more conservative approach less likely to draw public scrutiny would be not to effect an in-term increase. The Council member currently receiving benefits cannot be required to pay the City back in the absence of evidence establishing that he did not act in good faith in accepting such compensation. I have not been made aware of any such evidence.

Please let me know if you have any questions or if you would like to discuss this memo.