

ORDINANCE NO. 89-23

**AN ORDINANCE AUTHORIZING THE HIRING OF THE LAW FIRM OF
DOOLEY, GEMBALA, MCLAUGHLIN, & PECORA AS SPECIAL COUNSEL TO THE
CITY OF AVON FOR ALL MATTERS PERTINENT TO THE CASE OF
STATE EX REL AVON, OHIO, PETER RESTIVO vs. CITY OF AVON, et al
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Avon and all of City Council has been named as Defendants in a lawsuit filed on June 26, 2023 by Peter Restivo, Brandon Veverka, Hilliard Partnership, LLC and Stop Avon Flooding Everywhere, LLC, captioned as State ex rel Avon, Ohio Peter Restivo vs. City of Avon, et al, Case No. 23-CV-209370, Lorain County Court of Common Pleas; and

WHEREAS, to fully protect the interests of the City and City Council as named defendants in these proceedings and to achieve the best possible resolution, the Law Director recommends the hiring of outside counsel who specializes in the area of Zoning and Land Use litigation to review, prepare and represent their interests in this action; and

WHEREAS, Council deems it to be in the best interest of the health, safety and welfare of the citizens of Avon that outside special counsel be retained as quickly as possible to assist the Law Director in representing the interests of the city and City Council in these matters.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - Effective upon the passage of this Ordinance and retroactive to June 27th, 2023, Council hereby authorizes the administration to retain the services of Dooley, Gembala, McLaughlin, & Pecora, (hereinafter referred to as Dooley, et al.), as special counsel to assist the Law Director in the conduct of the city's defense and the defense of each City Council member in State ex rel Avon, Ohio Peter Restivo vs. City of Avon, et al, Case No. 23-CV-209370, Lorain County Court of Common Pleas.

Section 2 - That the proposal for these services submitted by Dooley, et al. is hereby accepted and marked as Exhibit A and made a part of this Ordinance by reference. Further, Dooley, et al. as special counsel, shall be compensated at the rate stated therein. Council approves and ratifies the actions taken by Dooley, et al. commencing with June 27, 2023 and payment for said services rendered commencing on said date and going forward shall be approved by the Law Director and issued pursuant to the directives of the Finance Director.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary

for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to retain special counsel without delay and retroactive to June 27th, 2023 in State ex rel Avon, Ohio Peter Restivo vs. City of Avon, et al.; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: July 10, 2023

DATE SIGNED: July 19, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR July 11, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director
City of Avon, Ohio

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

POSTED July 11, 2023
Electronically and at City Hall as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director

I, Gail A. Hayden, Assistant Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 89-23, passed by the Council of said City on July 10, 2023.

IN WITNESS WHEREOF, I have on this 11th day of July, 2023, affixed my signature and official seal of the Clerk of Council of the City of Avon, Ohio.

Gail A. Hayden
Gail A. Hayden, Assistant Clerk of the Council
of the City of Avon, Ohio

Direct: 440.930.4031
Email: mdooley@dooleygembala.com

July 7, 2023

VIA EMAIL ONLY: jgasior@ssgavonlaw.com

City of Avon
c/o John A. Gasior, Law Director
36080 Chester Road
Avon, Ohio 44011

Re: Terms of Professional Engagement
State ex rel. Avon, Ohio, et al. v. City of Avon, et al.
Lorain County Common Pleas Court, Case No. 23CV209370

Dear John:

We are pleased that you have asked Dooley, Gembala, McLaughlin & Pecora Co., LPA (the "Firm") to serve as counsel to You in the above referenced matter. This letter describes the basis on which our Firm will provide legal services to You in the event we are so retained.

Client. Our client in this matter will be the City of Avon, City of Avon City Council, Brian Fisher, Tony Moore, Jennifer Demaline, Tammy Holtzmeier, Dennis McBride, Scott Radcliffe and Craig Witherspoon ("You").

Scope of Engagement. You are engaging us solely to represent You in connection with the above-referenced matter. We may agree with You to limit or expand the scope of our representation from time to time, provided that any such change is confirmed by us in writing.

Terms of Engagement. Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct and any needed Court approval. In the event that we terminate the engagement, we will, subject to the terms hereof, take such steps as are reasonably practicable to protect your interests in this matter, and if You request, we will suggest to You possible successor counsel and provide your new counsel with whatever documents You have provided to us.

Compensation. Our compensation will be based primarily on the billing rate for each attorney and paralegal devoting time to this matter using the rates attached. Rates for attorneys range from \$200 per hour to \$375 per hour, and rates for paralegals and law clerks range from \$125 per hour to \$175 per hour. It is our plan that I will be the lead attorney and primary contact on this matter, although we routinely assign work to other

lawyers and paralegals to achieve the most efficient and economical result for You. The hourly rates of our professionals are periodically reviewed and adjusted to reflect the current cost of delivering comparable legal services.

Statements will be rendered monthly for work performed and expenses incurred during the previous one-month period and sent via electronic mail to the appropriate address designated by You. Payment is due upon receipt of our statement. Please note that credit card payments will be processed without additional fees. If you disagree with, dispute, or question the amount stated to be due under any statement which we issue to You, we ask that you communicate such issues to us immediately.

Our Firm's policy regarding disbursements is attached to this letter. Any statement which is not paid within 60 days of its due date will be considered past due. We further reserve the right to withdraw from the representation if You fail to pay our invoices on a timely basis or otherwise fail to comply with any other payment arrangement including retainer arrangements.

Importantly, the total fees and costs relating to this matter are not predictable, and we can make no commitment concerning the maximum fees that will be necessary to resolve or complete this matter. Please note that payment of the firm's fees and costs is in no way contingent upon the ultimate outcome of the matter.

Client Responsibilities. You agree to pay our statements for services and expenses as provided herein. In addition, You agree to be candid and cooperative with us and will keep us informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our representation of You or otherwise reasonably requested by us. Your failure to communicate and cooperate with us in these respects could have an adverse effect on our ability to represent your interests effectively and efficiently in this matter and may require that we suspend services or entirely withdraw from this engagement.

Conflicts of Interest. The Firm represents many entities and individuals. If a conflict of interest arises, we will advise You and to jointly determine, on a case-by-case basis, whether a conflict can be waived.

Conclusion of Representation. Unless previously terminated, our representation will terminate upon our sending You our final statement for services rendered in this matter.

Post-Engagement Matters. You are engaging the Firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless You engage us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise You with respect to future legal developments.

Standard Terms of Representation. Other material terms of this engagement are set forth in the Standard Terms of Representation attached to this engagement letter which are, by this reference, incorporated into and made an integral part of this engagement letter.

Applicability to Future Engagements. Unless a different engagement letter is executed in the future, the basic terms of this engagement letter will also be applicable to, and govern our professional relationship on all subsequent matters, on or in which we may become involved or engaged on your behalf.

While we cannot guarantee the outcome or success of this engagement, we will work hard to accomplish your objectives. Kindly indicate your acceptance of the terms of this letter and the Standard Terms of Representation by signing the acceptance below.

Very truly yours,



Matthew A. Dooley
MAD/aj

Encls: Standard Terms of Representation

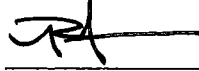
ACCEPTANCE

The foregoing terms of this engagement are accepted.

City of Avon, and on behalf of the individual defendants

By: Bryan K. Jensen

Its: Mayor

Signature: 

Date: July 11, 2023

Pursuant to ~~Resolution No.~~ Ordinance No. 89-23

Standard Terms of Representation

Professional Fees. The principal basis for computing our charges for services rendered by our attorneys and paralegals are based on the time devoted to work on a particular legal matter multiplied by hourly rates for each professional performing such services.

The Firm charges for all time devoted to legal matters, including the following examples: meetings and telephone conferences with clients and others relevant to the case or transaction; legal research, drafting, reviewing and commenting on documents; correspondence; interviewing or deposing witnesses; travel time; discussions among attorneys in our office involved in the matter; hearings and trials; and answering requests for information from third parties.

Retention and Disposition of Documents. When our representation of You in this or any particular matter terminates, we may ask You if You desire your papers and property returned to You. If You do not respond requesting the return of your papers and property, You agree we may upon reasonable notice dispose of such papers and property. Our own files pertaining to the matter will be retained by the Firm. These Firm files include, for example, Firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the Firm may be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

Expenses/Disbursements. In addition to charges for professional services as described above, the Firm also bills for expenses incurred on our client's behalf. These expenses may include but are not limited to the following examples: duplication and binding of documents; telecopy, telex, fax and telephone conferences; messengers, couriers and postal services; secretarial overtime, word processing and other special staffing requirements; expenses for computerized legal research and other automated services; and travel expenses including, where appropriate, meals, transportation, lodging and other business expenses.

In addition, our services frequently require engaging the services of third parties on our client's behalf. Generally, clients are asked to pay such third parties directly; however, the Firm may advance payments to third parties and include them in its periodic bills. Subject to the forgoing, it will be your responsibility to pay as billed for disbursements made on Your behalf as indicated below.

Telephone charges. We will not bill You for long-distance, cellular or local charges.

Photocopies. We generally do not bill for routine photocopies; provided, however, that for projects that require more than 100 pages, we will bill photocopies at 5 cents per page for black and white copies, and 10 cents per page for color copies.

Outside Computer Research (Lexis or Westlaw). We will bill online legal research costs at standard Lexis or Westlaw rates.

Filing Fees. We will bill You the charges incurred by the Firm without markup.

Travel Expenses. We will bill travel expenses at our cost without markup.

Express Delivery Services (FedEx, UPS, etc.). We will bill all express delivery charges at our cost without markup.

Local Delivery or Local Filing Services. Local delivery services will be billed at our cost without markup.

Court Reporters, Expert Witnesses, Accountants, etc. We will bill at our cost without markup.

Insurance Coverage. You may have liability or other insurance coverage that may provide some reimbursement for the legal fees associated with our engagement. We urge You to contact your insurer or broker to determine the nature and extent of the applicable coverage, if any. It is the client's responsibility to pay the Firm for services rendered and to obtain reimbursement from the insurer.