



February 11, 2020

Mr. Matthew Truman

RE: Public Records Request Number PRR20-016

Dear Mr. Truman:

This letter acknowledges receipt of your public records request submitted to the City of Huber Heights dated February 11, 2020. Your public records request states:

During last nights council meeting, Mayor Jeff Gore said that if the public wanted more information about the complaint filed by Councilman Glenn Otto there are public records we should request. Let this email serve as my request for all supporting documents concerning the complaint against the Mayor by Otto. To include, but not limited to the complaint and decisions rendered, the email correspondence from Council, staff, City Attorney, and City Manager.

In accordance with the Ohio Public Records Act, the City of Huber Heights will comply with your public records request to the extent that the request seeks reasonably identifiable public records maintained by the City which are subject to disclosure under the provisions of the Ohio Public Records Act.

The City is currently processing your public records request. Your public records request has been forwarded to the appropriate department(s)/division(s) for review and response. The City anticipates having the responsive records, if any, for you in the near future; at which time, you will be notified that the records can be made available for your inspection and/or the records can be provided to you which are subject to disclosure under the provisions of the Ohio Public Records Act. If you have any questions regarding the information above or this public records request, please feel free to contact me. Thank you.

Anthony C. Rodgers
Public Records Administrator
City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424
Phone: (937) 237-5832
Email: arodgers@hhoh.org

CC: Laura L. Davis, Public Records Technician
Gerald McDonald, Law Director

Rodgers, Anthony

From: Byrge, Nancy
Sent: Monday, February 10, 2020 12:21 PM
To: Otto, Glenn; Gore, Jeff; Rodgers, Anthony; Gerald McDonald; Shaw, Richard; Morgan, Seth; Campbell, Mark; Lyons, Ed; Hill, Andy
Subject: Findings - Glenn Otto Complaint against Mayor Jeffrey Gore
Attachments: Timeline.xlsx; Re: Mr. Otto's Complaint Against Mayor Gore; Mr. Otto's Complaint Against Mayor Gore; My Complaint Response (Partial) ; Re: Complaint against Mayor Jeffrey Gore; Complaint against Mayor Jeffrey Gore; RE: Otto Complaint Against Mayor Gore; Handling the Mayor complaint; RE: Handling the Mayor complaint; RE: Handling the Mayor complaint; RE: Handling the Mayor complaint; FW: residency matter; RE: Complaint; Complaint; RE: Complaint; RE: Complaint; Re: Complaint

Response to Complaint filed by Councilman Glenn Otto Against Mayor Jeffrey Gore

Attached are copies of all correspondence exchanged relating to this complaint, including a timeline developed from the information provided.

My responsibility was to determine from the information provided, whether the subject matter of the complaint warrants action by Council.

Upon receipt of the complaint, I distributed it to all members of Council in accordance with the Rules of Council. All correspondence between parties interviewed was done through email to ensure an audit trail and provide transparency.

The information I received from all parties involved in this complaint was very detailed and allowed me to develop a complete timeline of the facts involved. I am providing Mr. Otto, Mr. McDonald, and Council copies of all correspondence evaluated, together with a timeline of events, to ensure a fair and impartial basis for my conclusion.

Substance of Complaint:

That Mayor Gore failed to perform his sworn duties as Mayor with what appear to be:

- the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and
- a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Finding: R.C. 731.02 does not apply in this case since Huber Heights is a "Home Rule" municipality governed by our Charter. The facts provided by the law director and Mayor Gore, plus the timeline of events that I provided in this response, do not support your statement that the mayor failed to perform his sworn duties.

Based on the information provided, it appears obvious that:

- the Mayor knew of the situation at hand
- had received multiple legal recommendations from the City Attorney indicating a duty to take action

- chose not to notify City Council members of the situation in a timely manner as dictated by the Rules of Council. (This language was edited by Mr. Otto when he replied to my inquiry.)
- chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Findings: Mayor Gore was aware of Councilman Morgan's personal situation since November, 2019. The mayor was not held to ten days to notify Council of the action. That rule applies once a complaint is filed. When the Law Director issued his recommendations for adverse actions, he offered no other alternatives. It's important to note that the mayor is the "charging official," not the law director. Mayor Gore felt that Mr. Morgan should have an opportunity to provide more information on his situation to Council before taking such dramatic action. If, after hearing from Mr. Morgan, Council and the Law Director determined there was enough evidence to warrant a removal action, Mayor Gore would start that action IAW the City Charter. Even though you had left the room prior to council's evaluation, Council agreed to give Mr. Morgan additional time to settle his personal matters.

Answers to your three additional questions were answered by Mayor Gore and are as follows:

1. Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?

"I believe I had information given to me by Mr. Morgan after the email in question (on the 17th) that Mr. McDonald did not have that may have changed his opinion about probable cause that he used as the basis to advise me to start the removal proceedings. Also, keep in mind the 17th of January was a Friday. Although this was not a written formal complaint submitted to me, I was acting in good faith knowing this was literally the next day since I was informed of the documents and believed I had 10 days to act Accordingly."

2. Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?

"No such request was made of me or denied by me. I did ask the question of Mr. McDonald the afternoon of the 17th if he could wait to send the email so Mr. Morgan could address the council directly at the upcoming work session on the 21st (which was still within the 10 days) and Mr. McDonald informed me he had already sent the email to Mr. Otto and Mr. Morgan, and that was the end of it. "

3. Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

"Mr. Otto left the executive session prior to the conclusion of the discussion and was not there when I asked Mr. McDonald if I could get with him in a couple days to determine if his opinion of probable cause had changed after hearing Mr. Morgan make his case for residency. Council agreed that would be ok, and Mr. McDonald said that would be fine. Two days later, on January 23rd I received an email from Mr. McDonald advising me to take no further action on the Morgan residency issue. I was informed to keep monitoring Mr. Morgan's situation (specific to his intent) and if it changed, I'd need to proceed with the removal process outlined in the charter. Mr. McDonald also informed me that if a formal complaint was submitted to me in writing regarding Mr. Morgan's residency, I would need to investigate that complaint as outlined in the charter as well. I sent a response to Mr. McDonald stating I understood and if such complaint was received, I would certainly act according to the charter."

Findings: Based on the facts and timeline presented, Mr. Otto's concerns should never have reached the complaint stage. Unfortunately, it did due to the lack of communications and due diligence by Councilman Otto prior to submitting the complaint. [Mr. Otto took information provided to him by a third-party and failed to seek clarification of the facts, from any of the parties involved, before presenting the information to the attorney for action. Additionally, Mr. McDonald did not possess all the facts when he issued his initial recommendation. Thorough communication and due

diligence are critical when evaluating any issues and/or concerns to ensure they are dealt with professionally and properly; especially, when "removal of personnel" issues are involved. That clearly was not the case in this instance.

In conclusion, as the information presented indicates, the Mayor did not violate the City Charter, Rules of Council, or ORC. 731.02. I recommend that both Mr. Otto and Mr. McDonald provide Mr. Morgan an apology for acting prematurely and unnecessarily subjecting him to public humiliation; and Mr. Otto provide Mayor Gore an apology for filing this complaint before completing his due diligence.

Nancy L. Byrge

Vice Mayor

City Councilwoman At-Large

6131 Taylorsville Road

Huber Heights, OH 45424

937-716-2779

Glenn Otto Complaint Against Mayor Jeff Gore Timeline of E

| Date | Sender | Recipient | Text/Action |
|------------|-----------------|-----------------|--|
| 10/22/2019 | Gerald McDonald | Jeff Gore | Law Director advises mayor that Mr. Morgan is going through a divorce and was temporarily staying with his parents in Beaver Creek. |
| 11/1/2019 | Seth Morgan | Jeff Gore | Mr. Morgan advised Mayor Gore of his temporary residency |
| 1/16/2020 | Gerald McDonald | Glenn Otto | Requests court documents re: Mr. Morgan's residency |
| 1/16/2020 | Glenn Otto | Gerald McDonald | Court documents provided |
| 1/16/2020 | Gerald McDonald | Glenn Otto | "We have a serious issue if he is not currently living in the city." "Listing the current house is not necessarily a problem if he has established another legal residence." |
| 1/16/2020 | Gerald McDonald | Jeff Gore | Called to inform that Mr. Otto had contacted him to advise that Mr. Morgan was no longer living in Ward 3 |
| 1/16/2020 | Gerald McDonald | Otto & Gore | "Seth....still considers himself temporarily away." "I told him...that a case can be made for residency (it can) but the bottom line is I think it would be best if he resigns ASAP. |
| 1/16/2020 | Jeff Gore | Facebook | Mayor Gore responded to posting on Facebook indicating the matter would be addressed at the following Tuesday work session |
| 1/16/2020 | Jeff Gore | Seth Morgan | Call Mr. Morgan to get an update on his situation - It was still his intent to remain in Ward 3 |
| 1/17/2020 | Gerald McDonald | Jeff Gore | Provided background on research done and legal citations regarding residency. |
| 1/17/2020 | Gerald McDonald | Glenn Otto | Shared copy of "Need to commence removal Proceedings" memo to Mayor Gore based on the legal documents provided to him by Mr. Otto |
| 1/21/2020 | Gerald McDonald | Jeff Gore | Guidance for possible Executive Session tonight |
| 1/21/2020 | Council | Council & Mayor | Executive Session held to discuss residency issue |

| | | | |
|-----------|-----------------|-----------------|---|
| 1/23/2020 | Gerald McDonald | Jeff Gore | Provided formal direction/guidance on the Morgan residency issue |
| 1/27/2020 | Glenn Otto | Nancy Byrge | Received Complaint |
| 1/28/2020 | Nancy Byrge | Council & Mayor | Distribution of complaint |
| 1/29/2020 | Gerald McDonald | Nancy Byrge | Handling the Mayor Complaint |
| 1/29/2020 | Nancy Byrge | Gerald McDonald | Confirmation to attorney that all contacts would be through email |
| 1/29/2020 | Nancy Byrge | Gerald McDonald | Request for documentation provided by Mr. Otto supporting residency |
| 1/29/2020 | Gerald McDonald | Nancy Byrge | Provided legal documentation Mr. Otto used as basis of complaint |
| 1/29/2020 | Gerald McDonald | Nancy Byrge | Provided Rule 13 regarding handling of complaints |
| 1/30/2020 | Nancy Byrge | Gerald McDonald | Sent interview questions |
| 1/30/2020 | Nancy Byrge | Glenn Otto | Sent interview questions |
| 1/30/2020 | Nancy Byrge | Jeff Gore | Sent interview questions |
| 1/31/2020 | Glenn Otto | Nancy Byrge | Provided answers to interview questions |
| 1/31/2020 | Gerald McDonald | Nancy Byrge | Provided answers to interview questions |
| 2/3/2020 | Jeff Gore | Nancy Byrge | Provided answers to interview questions |
| 2/6/2020 | Nancy Byrge | Council & Mayor | Memo stating my findings would be provided NLT 2/10/2020 |
| 2/10/2020 | Nancy Byrge | Council & Mayor | Findings provided to Council |

| Events |
|---|
| Notes |
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| Exact date unknown |
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| "A temporary departure from a residence does not disqualify a council member from serving. The key is the intent to return." "I am not making a determination that Mr. Morgan's residency has lapsed, but I do think there is enough evidence present to constitute probable cause." Referenced Sec. 13.08 of Charter citing responsibilities of "Charging Official." |
| |
| "To consider the investigation of a complaint regarding an elected official" |
| Morgan residence is not for sale. Council agreed to allow more time before a residency decision is made. Law director to provide feedback to mayor within a few days whether his initial assessment of the situation had changed. |

Continue to monitor situation - "You need not take any formal action at this time"

[illegible]

Rodgers, Anthony

From: Gore, Jeff
Sent: Monday, February 3, 2020 9:19 PM
To: Byrge, Nancy
Subject: Re: Mr. Otto's Complaint Against Mayor Gore

Vice Mayor Byrge,

Please find attached my responses to yours, and Mr. Otto's questions regarding his complaint. My responses are below each specific question asked. I hope this format will make it easier for you when preparing your conclusions. If you prefer them in another format, I can copy them to a different document and attach them as well?

Mayor Gore

On Jan 30, 2020, at 3:37 PM, Byrge, Nancy <NByrge@hhoh.org> wrote:

Mayor Gore,

As recommended by our law director, I am requesting all responses to my inquiries into this complaint be provided through email.

To facilitate a fair and impartial analysis of Mr. Otto's complaint against you, I have included the substance of the complaint and request that you provide answers to the following questions.

Substance of complaint:

That Mayor Gore failed to perform his sworn duties as Mayor with what appear to be: the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information provided, it appears obvious that: the Mayor knew of the situation at hand had received multiple legal recommendations from the City Attorney indicating a duty to take action chose not to notify City Council members of the situation, and chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Questions:

- Did you have any communications with Mr. Otto regarding the residency issue prior to his filing this complaint? If so, please explain. *The only conversations I was involved with Mr. Otto regarding Mr. Morgan's residency was during executive session held prior to the work session on January 21st, 2020*
- Did you contact Mr. Morgan to gather additional facts about his residency after receiving Mr. McDonald's January 17, 2020 email with subject line, "Need to commence removal proceedings?" *Mr. Morgan contacted me by phone the evening of the 16th of January after he was made aware this situation was being played out on social media. I was aware of the documents Mr. Otto had sent to the Mr. McDonald, and I asked Mr. Morgan if he had in fact listed his home for sale and he told me no. Mr. Morgan was very adamant that he was still a resident of ward 3 in the city of Huber Heights. Mr. Morgan and I then met for coffee on*

Sunday January 19th, 2020 where we discussed the situation further where he gave me more detailed information regarding the situation as he was also aware of Mr. McDonald's January 17th email regarding "removal proceedings". At the January 19th meeting with Mr. Morgan he also stated that he was going to make his case for residency as he did not believe he had lost his residency just because he was temporary living at another address. Mr. Morgan made specific note that the address of his parents was listed on the documents supplied by Mr. Otto was at the advice of his attorney for legal reasons dealing with his children that I do not believe is an integral part of my response to this complaint.

- Do you believe that the Law Director's emails are a recommendation or a direction? I believed the law directors email on the 17th was a recommendation. Mr. McDonald is clear when he says that he's not determining that Mr. Morgan's residency has lapsed, however he believed there was sufficient evidence for probable cause. Mr. McDonald states the probable cause was because Mr. Morgan had listed the marital home for sale and he had not secured other residency within ward 3 of Huber Heights. Remember...the evening of January 16th Mr. Morgan told me he had not actually listed the home for sale. I didn't know whether Mr. Morgan had made that clear to Mr. McDonald or not prior to the 17th email in question, and I knew we would be having a work session meeting on Tuesday the 21st and we would discuss it. It was on Friday January 17th that I informed Mr. McDonald I'd like to have an executive session to discuss the matter. At this point in time only 3 days had passed since I became aware of the documents Mr. Otto had submitted to Mr. McDonald on the 16th.
- Did the law director suggest any other options to pursue in this matter? Mr. McDonald did not suggest anything else at the time of the email on the 17th of January.
- Re: Law Director's email to Mayor Gore, dated January 17, 2020 at 9:47 AM - Item #3 – Why did you choose to present this matter to Council in executive session rather than follow the law director's recommendation to commence removal proceedings? I believe that I had different information than the law director, based on information given to me by Mr. Morgan and felt he should be allowed to make his case for residency to his council colleagues. I believed at that time had Mr. Morgan not been able to make his case, and the opinion of probable cause by the law director did not change, I would have started the removal process by notifying everyone in the executive session of just that, and the formal proceedings declared in the charter would have been followed.
- Do you have any other information you wish to provide? I'd like to add that I believe this entire situation is extremely unfortunate and could have been avoided had some professional communication and courtesy been extended. Mr. Otto informed me after the executive session in the conference room that he wanted me to know that he intended on running against me in the next mayoral election. I believe that there is a plan in place once again to try and take over as many seats as possible on the council by Mr. Otto and his "team". I believe the campaign for 2021 is already in full swing and I think this complaint against me and the attempted removal of Mr. Morgan is the first step in trying to minimize the job I have done as mayor and to be used as a political point. Without revealing specific discussions in the executive session it was made pretty clear how Mr. Otto and Mr. Shaw felt about the mood of the council as it stands currently on the removal process of Mr. Morgan, therefore revealing how this could turn into a political win for them. I made my disgust well known for the political theater this had turned into, and how I felt it should have been handled. Mr. Shaw informed the council (after Mr. Otto left and I believe by accident) that they knew the documents existed well before they were sent to Mr. McDonald on the 16th of January. Why did they wait until after the first of the year and after the new vice mayor was chosen before submitting the documents? I don't believe this was a coincidence.

Also, as requested by Mr. Otto, please provide answers to the following questions:

- Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"? I believed I had information given to me by Mr. Morgan after the email in question (on the 17th)

that Mr. McDonald did not have that may have changed his opinion about probable cause that he used as the basis to advise me to start the removal proceedings. Also keep in mind, the 17th of January was a Friday. Although this was not a written formal complaint submitted to me, I was acting in good faith knowing this was literally the next day since I was informed of the documents and believed I had 10 days to act accordingly.

- Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested? No such request was made of me or denied by me. I did ask the question of Mr. McDonald the afternoon of the 17th if he could wait to send the email so Mr. Morgan could address the council directly at the upcoming work session on the 21st (which was still within the 10 days) and Mr. McDonald informed me he had already sent the email to Mr. Otto and Mr Morgan, and that was the end of it.
- Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days? Mr. Otto left the executive session prior to the conclusion of the discussion and did was not there when I asked Mr. McDonald if I could get with him in a couple days to determine if his opinion of probable cause had changed after hearing Mr. Morgan make his case for residency. Council agreed that would be ok, and Mr. McDonald said that would be fine. Two days later, on January 23rd I received an email from Mr. McDonald advising me to take no further action on the Morgan residency issue. I was informed to keep monitoring Mr. Morgans situation (specific to his intent) and if it changed I'd need to proceed with the removal process outlined in the charter. Mr. McDonald also informed me that if a formal complaint was submitted to me in writing regarding Mr. Morgan's residency, I would need to investigate that complaint as outlined in the charter as well. I sent a response to Mr. McDonald stating I understood and if such complaint was received, I would certainly act according to the charter.

Nancy L. Byrge

Vice Mayor

6131 Taylorsville Road

Huber Heights, OH 45424

937-716-2779

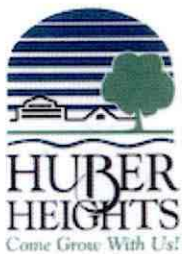
Sent from [Mail](#) for Windows 10

Jeff Gore

Mayor, Huber Heights Ohio

937-672-7272

jgore@hhoh.org



Jeff Gore

Mayor

City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424

City Hall: (937) 233-1423
City Fax: (937) 233-1272
Cell: (937) 672-7272

Email: jgore@hhoh.org

Rodgers, Anthony

From: Byrge, Nancy
Sent: Thursday, January 30, 2020 3:37 PM
To: Gore, Jeff
Subject: Mr. Otto's Complaint Against Mayor Gore

Mayor Gore,

As recommended by our law director, I am requesting all responses to my inquiries into this complaint be provided through email.

To facilitate a fair and impartial analysis of Mr. Otto's complaint against you, I have included the substance of the complaint and request that you provide answers to the following questions.

Substance of complaint:

That Mayor Gore failed to perform his sworn duties as Mayor with what appear to be:
the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and
a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information provided, it appears obvious that:
the Mayor knew of the situation at hand
had received multiple legal recommendations from the City Attorney indicating a duty to take action
chose not to notify City Council members of the situation, and
chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Questions:

- Did you have any communications with Mr. Otto regarding the residency issue prior to his filing this complaint? If so, please explain.
- Did you contact Mr. Morgan to gather additional facts about his residency after receiving Mr. McDonald's January 17, 2020 email with subject line, "Need to commence removal proceedings?"
- Do you believe that the Law Director's emails are a recommendation or a direction?
- Did the law director suggest any other options to pursue in this matter?
- Re: Law Director's email to Mayor Gore, dated January 17, 2020 at 9:47 AM - Item #3 – Why did you choose to present this matter to Council in executive session rather than follow the law director's recommendation to commence removal proceedings?
- Do you have any other information you wish to provide?

Also, as requested by Mr. Otto, please provide answers to the following questions:

- Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?
- Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?
- Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

Nancy L. Byrge

Vice Mayor
6131 Taylorsville Road
Huber Heights, OH 45424
937-716-2779
Sent from [Mail](#) for Windows 10

Rodgers, Anthony

From: Gore, Jeff
Sent: Sunday, February 2, 2020 11:12 PM
To: Byrge, Nancy
Subject: My Complaint Response (Partial)
Attachments: Complaint Response.pdf; Jan 17 email.pdf; Jan 21 email.pdf; Jan 23 email.pdf

Vice Mayor Byrge,

Please find attached a timeline of events for information as I received it and became aware.

I still need to answer the specific questions you posed in your email to me, and Mr. Otto's questions. I should have those finished tomorrow evening and will forward them to you once they are complete. I wanted to get this to you now since I have completed it.

Also find attached the emails between Mr. McDonald and myself that are referenced in my timeline of events.

Respectfully,

Jeff Gore
Mayor, Huber Heights Ohio
937-672-7272
jgore@hhoh.org



Jeff Gore
Mayor

City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424

City Hall: (937) 233-1423
City Fax: (937) 233-1272
Cell: (937) 672-7272

Email: jgore@hhoh.org

Vice Mayor Byrge,

In regard to the complaint filed against me by councilman Otto; you'll find my response in this correspondence. I will provide the timeline of information as it was presented to me with copies of email between the law director and myself regarding Mr. Morgan's residency.

During November, the city council only meets twice. We meet the first Tuesday, and the second Monday and no meetings are held the latter part of the month due to the Thanksgiving holiday. I do not recall if it was at the work session or the council meeting in November that Mr. Morgan approached me and informed me of the personal situation with his wife and that he had taken his children to stay temporarily with his parents in Beavercreek. My comments to Mr. Morgan at that time other than wishing him the best in resolving the matter was to ask him if it was temporary. Mr. Morgan informed me it was, and that he had spoken to Mr. McDonald to inform him as well. I told Mr. Morgan if the law director saw no issues with a temporary stay with his parents than I did not either and asked for him to keep me updated.

The same situation occurs in December as in November. We hold only two meetings in December which are the first Tuesday for the work session and the second Monday for the council meeting. Those were the only two times I had seen Mr. Morgan since being made aware in November of his temporary situation. My recollection is that both of those meetings were pretty quick dealing with end of year legislation, and it wasn't at the forefront of my mind to ask Mr. Morgan where he was living. Although I do consider Mr. Morgan more than an acquaintance, we do not communicate on a regular basis and I did not feel comfortable asking about details of his personal life regarding an extremely difficult situation I knew he must be going through. What I did know is that Mr. McDonald knew, and Mr. Morgan was to update me on the situation.

The January meeting cycle was the next time I had any interactions with Mr. Morgan, and he did not bring his residency to my attention. As you know Mrs. Vice Mayor, there are a few of us on this council that are currently being sued and were notified of that just days before Christmas. All I can say is that my mind was on other matters causing distractions than where Mr. Morgan was currently sleeping.

On January 16th, 2020, at approximately 3:30 in the afternoon Mr. McDonald called me and informed me that Mr. Otto had contacted him to let him know Mr. Morgan was not living in ward three in the city of Huber Heights. Of course, this was not new information to either of us because Mr. Morgan had informed us (me) prior in November.

Just a few hours after Mr. McDonald notified me that Glenn sent him information regarding Mr. Morgan's residency, I was being tagged on Facebook posts which have since been removed from the social media site ... asking me what I knew of the situation. I explained my frustration that spreading Mr. Morgan's personal business on Facebook was not the proper way to handle this, and that it would be addressed at the following Tuesday work session meeting. Although

no specific information regarding Mr. Morgan's situation was being discussed at that time, the questions it raised would certainly bring that information to light.

I spoke to Mr. Morgan by phone on the night of January 16th to get further clarification of his living arrangements and his intentions. Mr. Morgan explained to me then it was still his intent to remain in ward three. As of November 22nd, I believe, according to documents provided by Mr. Otto, there was a petition to sell the marital home, and according to Mr. Morgan as of the time of the Tuesday work session his marital home had not yet been listed for sale.

Based on the January 17th email I have from Mr. McDonald (which will be attached as part of this correspondence) he states the reason for probable cause to begin removal proceedings was the sales listing of Mr. Morgan's primary residence and marital home, which we found not to be the case 4 days later on January 21st at the work session. In the January 17th email from Mr. McDonald to me, he provided legal research he received from attorney Gaby Neal from his firm which stated that "A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or country of this state for temporary purposes merely, with an intention of returning."

It is my understanding that as mayor I have 10 days to conclude any investigations that are submitted to me in writing or notify the council or complainant that I need more time to finish the investigation adequately. I'd like to state again, that I was informed on the 17th in an email of believed probable cause, and it was my decision to wait for council to hear Mr. Morgan speak on the matter on the 21st (4 days later) prior to following up on the probable cause given by Mr. McDonald. I do not believe any immediate action was required at that time based on the timeframe being within the 10-day period. Mr. McDonald clearly states in his January 17th email "Please note, I am not making a determination that Mr. Morgan's residency has lapsed" but he believes there is evidence to constitute probable cause. I'd like to note that January 17th was a Friday. I spoke to Mr. Morgan on Sunday the 19th and he informed me that his home had not actually been listed for sale and since that was the reasoning for Mr. McDonald's probable cause, I felt no harm in waiting until the 21st work session to continue the discussion with the rest of council and I had actually informed Mr. McDonald that I'd like to have an executive session Friday evening the 17th.

Mr. McDonald sent me an email on January 21st at 2:55PM regarding what the rules of the executive session would be regarding the residency issue of Mr. Morgan. That particular email is also attached in this correspondence.

This brings us to the work session meeting of Tuesday January 21st. Without divulging details of executive session information, Mr. Morgan and council discussed his residency issue and Mr. Morgan made his case for residency in that he still owned the marital home in ward three, still paid the mortgage, the utilities, and the taxes, and had not listed the home for sale. Mr. Otto became frustrated with the discussion and left the executive session and returned to the dais and did not hear the conclusion of the discussion when I said to Mr. McDonald that I would get with him within a couple days to see if his opinion had changed regarding Mr. Morgan's

residency based on the information Mr. Morgan provided to council in the executive session. The councilmembers present did not have any objections to this, and I was fully cognizant that I would still be within the 10-day time period to conclude an investigation. I fully believed that had Mr. McDonald's opinion not changed that it would not take me long to finish such investigation because all the information needed for an investigation had been discussed already. Mr. Morgan had been forthright in all of his answers that council and I had for him regarding the issue of his residency.

Two days later on Thursday January 23rd Mr. McDonald sent an email to me (which will be included as part of this correspondence) stating that "I wanted to formally give you direction / guidance on the Morgan residency matter based on my understanding of where you are at this point in time, and as set forth in detail below, it is my opinion that you need NOT take any formal action at this time". Mr. McDonald went on to state that I should continue to monitor the situation with Mr. Morgan however, if a formal written complaint specific to Mr. Morgan's residency was filed to me, I would need to investigate that complaint as such I would any other formal written complaint.

Once I received that email, the matter of residency was over unless I received a formal written complaint or was notified Mr. Morgan that his intent to remain a resident had changed. I responded to Mr. McDonald that I understood his guidance and that I would in fact begin an investigation if a formal written complaint was submitted to me.

From: McDonald, Gerald GMcDonald@pselaw.com
Subject: Need to commence removal proceeding ATTY CLIENT MATTER
Date: January 17, 2020 at 9:47 AM
To: J Gore Jgore@hhoh.org

Mr. Gore,

After the October 22, 2019 Council Work Session, I was approached by Council Member Morgan. He advised me that he was going through a divorce and that he and his children were temporarily staying with his parents in Beavercreek. He asked how that would affect his office as Ward Three Councilmember. I told him if it was temporary, it would not be an issue. However, if he was not going to return to his marital home, he would need to secure another residence in Ward Three to maintain his council eligibility.

The next day, I requested attorney Gaby Neal of my office look into the matter and provide me with legal research on the issue. I was given a memo on Tuesday October 29 which provided that when construing similar provisions of the Ohio Revised Code (R.C. 731.02 which provides: "A member who ceases to possess any of such qualifications, or removes from the member's ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit the member's office"), courts have noted "The word 'remove' in this section refers not to temporary absence, but to a permanent removal of residence..." In re Petition of Gorey, 2 Ohio N.P. (n.s.) 389, 1904 Ohio Misc. LEXIS 291 (Ohio P. Ct. Sept. 1, 1904). "A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or county of this state for temporary purposes merely, with an intention of returning." STATE ex rel. WEBER, 1908 Ohio Misc. LEXIS 398, *4-5, 22 Ohio C.C. (n.s.) 314, 316.

Similarly, when looking at residency for purposes of voter eligibility, Ohio Revised Code section 3503.02 states that

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

- (A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.
- (B) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.
- (C) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.
- (D) The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence."

As you can see, a temporary departure from a residence does not disqualify a council member from serving. The key is the intent to return. As Mr. Morgan indicated that it was his intent to return when we spoke in October, I did not consider the matter an urgent situation at that time.

while I had the matter on my mind I did not timely follow up with Mr. Morgan for status. When I was contacted by Mr. Otto on January 16 and advised that he had obtained copies of court documents that indicated Mr. Morgan had been out of the home for in excess of 30 days and had petitioned the court to sell the house I was quite surprised. As I mentioned to you and Mr. Otto, I had lost the sense of timing on this matter and did not realize that two months had passed since I was initially advised by of the divorce proceedings.

In reviewing the matter and discussing it with Mr. Morgan on January 16, I am off the opinion that the issue of Mr. Morgan's residency statute's is not as evident as it was in October. By this I mean, I am not as certain that the departure from the Huber Heights should still be considered "temporary" nor am I sure that the facts back up an "indent" to return to Huber Heights. One of the key reasons for this is that Mr. Morgan petitioned to sell the marital home and has not secured other living arrangements in Ward 3.

Please note, I am not making a determination that Mr. Morgan's residency has lapsed, but I do think that there is enough evidence present to constitute probable cause. Section 13.08 of the Charter provides: "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

Section 4.03 of the Charter titled "Eligibility" provides:

Candidates for the offices of Councilmember and Mayor shall be qualified electors of the City at the time of filing their nominating petitions, shall have maintained their residency in the City at least one (1) year immediately preceding the election, and shall maintain residency during their term of office. Candidates for the offices of Councilmember to be elected by districts shall have resided in their respective districts for at least one year immediately preceding the election and shall maintain such residency during their term of office. Councilmembers, including the Mayor, who cease to meet the preceding eligibility requirements during their term of office shall forfeit their offices pursuant to Section 13.08 of this Charter." Unlike the residency requirements of certain employees of the City, which has been deemed to be unconstitutional, the residency provision in Huber Heights Charter for elected officials is mandatory and enforceable. Under Charter Section 13.08 "Removal of Official" a Councilmember "shall be removed" for "the failure to possess or maintain the qualifications of the office prescribed by this Charter."

In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal.

I do point out that Charter Section 13.08(D) of this provision provides "[t]he removal of an official or the occurrence of any of the causes permitting the removal shall not invalidate any official action of the Council in which the member participated." As such we will not need to ratify any previously passed legislation.

In the past, the following time line has been used:

1. Mayor serves as the Charging Official with respect to another Council member's removal. (13.08(B)).
2. Mayor has reason to believe there is probable cause for removal based on one

2. Mayor has reason to believe there is probable cause for removal based on one of the 5 enumerated causes. (13.08(C)) In this case, section 13.08(C)(1) "Failure to possess or maintain the qualifications of the office prescribed by this Charter". Maintaining the qualifications is required by Section 4.03
3. Mayor to bring issue to Council in order to get authority to proceed with securing third party legal counsel (County Prosecutor or Special Council).
4. Law Director requests the County Prosecutor or his designee to prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If the County Prosecutor refuses to accept the responsibility, Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any reviews thereof by the Courts. (13.08(G))
5. Hearing date to be determined. The hearing cannot occur until at least 10 days after providing Councilmember with formal notice.
6. Mayor gives written notice of (1) the alleged cause for removal cause AND (2) time/date/place of hearing. Notice must be given by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. (13.08(C))
7. Under 13.08(F) the Councilmember charged with conduct constituting grounds for removal from office shall be entitled to a public hearing on demand, but in any case, a record of the proceedings shall be made and preserved.
8. If a public hearing is demanded, a notice of such hearing shall be published in one or more newspapers of general circulation in the City and posted on available public media at least one (1) week in advance of the hearing, and in such an event, the Charging Official may reschedule the time, date and place of the hearing to accommodate the publication of the notice. If the hearing is rescheduled, the Charging Official shall notify the accused person of such fact.
9. At hearing Council shall hear, provide an opportunity to the accused person to be heard and present defenses, and determine whether the accused person shall be removed from office. Council shall be the judge of the grounds for removal from office and shall conduct the proceedings relative to removal. The Council shall have the power to subpoena witnesses, administer oaths and require the producing of evidence, either on its own motion or through the process of any appropriate court or officer thereof.
10. A record of the proceedings must be made and preserved. Hearing can be adjourned
11. To remove an official there must be a two-thirds (2/3) vote of the Councilmembers then holding office, provided that the accused Councilmember shall not vote on any matter during the removal procedure and shall not be counted in determining required majorities. 13.08(C)).

Seven (7) Council members would be voting. Need 5 of the 7 to constitute 2/3. Mayor does not vote in this proceeding. (Charter section 4.04 "The Mayor shall be a member of Council but shall not have the right to vote on issues before Council except in the cases where the vote for the remaining members of Council results in a tie vote, in which cases the Mayor must cast the deciding vote.

I intend to send this email to Mr. Morgan (for obvious reasons) and Mr. Otto as a courtesy since he was the one that brought this to the forefront. I think we need to formally advise all of council about this issue and I would ask that you allow me to send this email to them as well.

Please note this is attv client matter and no part of this email should be released publiclv.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

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From: McDonald, Gerald GIMcDonald@pselaw.com
Subject: IMPORTANT NOTE REG TONIGHT'S EXECUTIVE SESSION ATTY CLIENT MATTER
Date: January 21, 2020 at 2:55 PM
To: J Gore Jgore@hhoh.org
Cc: S Morgan smorgan@hhoh.org

Jeff, you mentioned to me that you may call an executive session tonight with respect to the Morgan residency issue.

Under the law, a public body may adjourn into executive session:

- To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; and
 - To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the employee, official, licensee, or regulated individual requests a public hearing;
- BUT IT CANNOT hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official's duties or to consider that person's removal from office.

As such, the reason for the executive session, and the discussion therein, needs to be "to consider the investigation of a complaint regarding an elected official" but not to discuss any discipline or removal. In other words, we can go back there to hear what Seth has to say but there cannot be any discussion on the removal process or grounds. It will be solely to have Seth address the residency issue.

As a courtesy, I am copying Seth on this email. I will advise Tony.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
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From: McDonald, Gerald GMcDonald@pselaw.com
Subject: Guidance and clarification on Morgan residency matter
Date: January 23, 2020 at 1:41 PM
To: J Gore Jgore@hhoh.org

Mr. Gore

I wanted to formally give you direction/guidance on the Morgan residency matter based on my understanding of where you are at this point in time. As set forth in detail below, it is my opinion that you need not take any formal action at this time.

As you know, Section 4.03 of the Charter titled "Eligibility" provides in pertinent part: "Candidates for the offices of Councilmember to be elected by districts shall have resided in their respective districts for at least one year immediately preceding the election and shall maintain such residency during their term of office. Councilmembers, including the Mayor, who cease to meet the preceding eligibility requirement during their term of office shall forfeit their offices pursuant to Section 13.08 of this Charter." Charter Section 13.08 "Removal of Official" provides a Councilmember "shall be removed" for "the failure to possess or maintain the qualifications of the office prescribed by this Charter."

As such, if a Ward Councilmember does not maintain residency in his ward during his term, he shall be removed. This begs the question of how does one determine if a Councilmember has maintained residency? As discussed, questions of residency involve an analysis of the circumstances and temporary stays outside of one's residence does not automatically give rise to a failure to maintain a residency.

Based on my review of the applicable law, the determination of residency under the 13.08 process commences with the Mayor as the "Charging Official" under Section 13.08(B) of the Charter. That section provides, "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

On January 17, I formally advised you of the situation as I understood it and that I believed there was probable cause to commence the removal process. You subsequently independently reviewed the situation (as is your prerogative) and determined that there was NOT probable cause to initiate the removal process.

As you do not believe there is probable cause, the issue of removal is currently off of the table and from a procedural aspect, no further action needs to be taken as to the past matters. Of course, as time goes on things may change, and you should continue to monitor the matter and consult often with Mr. Morgan as to his intent.

Please note that the above is all under the process described in Charter section 13.08 when an action believed to constitute a charter violation is brought to your attention. (In this case by me). While there is overlap, it is not the same as a process where a written complaint is filed under Article XIII "Complaints" of the Rules of Council.

At this point, to my knowledge, you have not received a written complaint under Article 13 the Rules of Council. Under the Rule, complaints against Councilmembers must be in writing and made to you setting forth the complaint. Should you receive a complaint

regarding the residency issue, notwithstanding your current stand that there is not probable cause to engage the removal process, you must still follow the Complaint process by distributing a copy of the written complaint to all members of the City Council. You must then document of record your activities in investigating and resolving the complaint. I recommend that if a complaint is filed, you complete a written response as soon as possible advising the initiator and the City Council of the disposition of the complaint (if longer than ten days you must provide a target date for completion). With this process, it would be appropriate for you to set forth in writing the reasons for your finding, which may very well be the same as your reasons for not proceeding with the removal process.

Again, other than monitoring the Morgan residency situation for any changes, no further action is required. Should a written complaint be filed, under the Rules you will be required to investigate it and follow the procedural steps set forth in the Rules.

Please let me know if you have any questions.

This correspondence is attorney client privileged and not subject to a records request. Please note, if I am asked by any council members as to the process, I will share the above procedural information (but not the actual correspondence). To date, I have not been asked.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
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2700 Kettering Tower
Dayton, Ohio 45423
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Rodgers, Anthony

From: Otto, Glenn
Sent: Friday, January 31, 2020 3:06 PM
To: Byrge, Nancy; Gerald McDonald
Subject: Re: Complaint against Mayor Jeffrey Gore

Mrs. Byrge,

The substance of the complaint, as you have outlined, appears to be generally correct with one recommended correction. I would ask that bullet point number five be corrected to say "*chose not to notify City Council members of the situation in a timely manner, as dictated by the rules of Council*".

The Rules of Council state the following under Section XIII, Complaints.

Upon receipt of a complaint, that is to be investigated under this rule, the Mayor or Vice Mayor shall distribute a copy of the complaint to all members of the City Council for review. All actions taken to investigate and resolve the complaint shall be documented as a matter of record. The Mayor or Vice Mayor will complete a written response as soon as possible advising the initiator and the City Council of the disposition of the complaint. In those cases where resolution requires longer than ten (10) business days, an interim written response and target date for completion will be provided to the initiator of the complaint and the City Council.

Additionally, you will see as stated in the above Rules of Council, that technically NO PROPER ACTION has been taken to this date as there has only been one discussion of this residency concern which took place in Executive Session and Section XIII states that "*All actions taken to investigate and resolve the complaint shall be documented as a matter of record.*" Again, I believe that we have violated the rules of executive session (which is why I took leave of the conversation), by discussing the details of a situation with the potential of removal of a Council Member in executive session, even though after the motion to adjourn to executive session, I questioned the validity of the motion and was told by the City Attorney that "...it's not going to be regarding the discipline or about removal", which it clearly was in my opinion.

The following are my answers to the questions that you proposed to me.

1. Did you have any verbal or written communications with Mayor Gore about his handling of the residency issue prior to filing this complaint? If so, please explain.

I had no direct communication with Mayor Gore concerning how I believe the situation should be handled. I believe that it is my duty to report perceived violations of the City Charter, Rules of Council and Ohio Revised Code, however it is the responsibility of the "Charging Official" (Which in this case was the Mayor) to follow proper protocol.

Rules of Council dictate, under item XII(C), that "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal,..."

The City Attorney clearly stated "probable cause" with the following comments, however no notice was given by the Mayor: Fri 1/17/2020 - "As an FYI, I have sent the Mayor a letter advising him to commence removal proceedings. I have not personally determined that residency has been lost, but I fully believe there is enough evidence to present probable cause to warrant commencement of the proceeding.

January 17, 2020 To: J Gore Subject: Need to commence removal proceeding

"...but I do think that there is enough evidence present to constitute probable cause."

"In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal."

2. Did you contact Mr. Morgan to gather additional facts before forwarding your concerns to the Law Director?

I had no contact with Mr. Morgan on this subject prior to my contact to Mr. McDonald. I contacted Mr. McDonald immediately after my notification of the potential issue and verification of the information received to inquire about the potential seriousness of the situation. In less than twenty-five minutes, Mr. McDonald responded and made the statement to me of "You are correct that we have a serious issue if he is not currently living in the City." I believe that it would have been improper (in reference to the required process) for me to have reached out for discussion on the matter with Mr. Morgan. It also appears that Mr. Morgan had ample time to follow the Rules of Council, Section XII which states that, "*Members having conflicts are expected to notify other members of the conflict as soon as such conflict becomes evident.*", which never occurred.

3. Do you believe that the Law Director's emails are a recommendation or a direction?

I believe that based on the content and context of the emails, Mr. McDonald was notifying Mr. Gore of his responsibilities as stated in the City Charter. As outlined in question number one, the Law Director gave both recommendation and direction.

4. Do you believe that Mayor Gore had any other options to pursue in this matter?

No. As established with prior proceedings concerning members of Council, the Mayor has stated that when the City Attorney advises him of perceived issues and recommends that certain direction should be taken, he believes that he is required to follow any such legal advice.

5. Re: Law Director's email to Mayor Gore, dated January 17, 2020 at 9:47 AM - Item #3 – Do you believe that the Mayor was complying with #3 in the timeline when he brought this issue to Council in Executive Session during the January 21, 2020, Council Work Session?

No. Again, the Rules of Council, Section XIII states that "*Upon receipt of a complaint, that is to be investigated under this rule, the Mayor or Vice Mayor shall distribute a copy of the complaint to all members of the City Council for review.*" In my opinion, a conversation four days later in executive session (which I believe was improper) does not constitute "Upon receipt". Additionally, Section XIII provides that "*All actions taken to investigate and resolve the complaint shall be documented as a matter of record.*"

6. Do you have any other information you wish to provide?

No, I believe that the information previously provided, along with the answers to your questions should be sufficient.

Thank you for your quick response to this issue and I look forward to your response to the complaint.

Thank You,

Glenn T. Otto
Huber Heights City Council
At-Large Representative

From: Byrge, Nancy <NByrge@hhoh.org>
Sent: Thursday, January 30, 2020 11:19 AM

To: Otto, Glenn <GOtto@hhoh.org>

Subject: Complaint against Mayor Jeffrey Gore

Mr. Glenn Otto,

As recommended by our law director, I am requesting all responses to my inquiries into this complaint be provided through email.

To facilitate a fair and impartial analysis of your complaint against Mayor Jeffrey Gore, I request that you confirm that (1) I have appropriately captured the substance of your complaint, and (2) that you provide answers to all of the questions listed below.

Substance of complaint:

That Mayor Gore failed to perform his sworn duties as Mayor with what appear to be:

- the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and
- a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information provided, it appears obvious that:

- the Mayor knew of the situation at hand
- had received multiple legal recommendations from the City Attorney indicating a duty to take action
- chose not to notify City Council members of the situation, and
- chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Questions:

1. Did you have any verbal or written communications with Mayor Gore about his handling of the residency issue prior to filing this complaint? If so, please explain.
2. Did you contact Mr. Morgan to gather additional facts before forwarding your concerns to the Law Director?
3. Do you believe that the Law Director's emails are a recommendation or a direction?
4. Do you believe that Mayor Gore had any other options to pursue in this matter?
5. Re: Law Director's email to Mayor Gore, dated January 17, 2020 at 9:47 AM - Item #3 – Do you believe that the Mayor was complying with #3 in the timeline when he brought this issue to Council in Executive Session during the January 21, 2020, Council Work Session?
6. Do you have any other information you wish to provide?

As requested, I will provide answers to the following questions and include them in my findings:

1. Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?
2. Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?
3. Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

Nancy L. Byrge

Vice Mayor

6131 Taylorsville Road

Huber Heights, OH 45424

937-716-2779

Sent from [Mail](#) for Windows 10

Rodgers, Anthony

From: Byrge, Nancy
Sent: Thursday, January 30, 2020 11:19 AM
To: Otto, Glenn
Subject: Complaint against Mayor Jeffrey Gore

Mr. Glenn Otto,

As recommended by our law director, I am requesting all responses to my inquiries into this complaint be provided through email.

To facilitate a fair and impartial analysis of your complaint against Mayor Jeffrey Gore, I request that you confirm that (1) I have appropriately captured the substance of your complaint, and (2) that you provide answers to all of the questions listed below.

Substance of complaint:

That Mayor Gore failed to perform his sworn duties as Mayor with what appear to be:

- the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and
- a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information provided, it appears obvious that:

- the Mayor knew of the situation at hand
- had received multiple legal recommendations from the City Attorney indicating a duty to take action
- chose not to notify City Council members of the situation, and
- chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Questions:

1. Did you have any verbal or written communications with Mayor Gore about his handling of the residency issue prior to filing this complaint? If so, please explain.
2. Did you contact Mr. Morgan to gather additional facts before forwarding your concerns to the Law Director?
3. Do you believe that the Law Director's emails are a recommendation or a direction?
4. Do you believe that Mayor Gore had any other options to pursue in this matter?
5. Re: Law Director's email to Mayor Gore, dated January 17, 2020 at 9:47 AM - Item #3 – Do you believe that the Mayor was complying with #3 in the timeline when he brought this issue to Council in Executive Session during the January 21, 2020, Council Work Session?
6. Do you have any other information you wish to provide?

As requested, I will provide answers to the following questions and include them in my findings:

1. Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?
2. Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?
3. Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

Nancy L. Byrge

Vice Mayor
6131 Taylorsville Road
Huber Heights, OH 45424
937-716-2779

Sent from [Mail](#) for Windows 10

Rodgers, Anthony

From: Gerald McDonald
Sent: Thursday, January 30, 2020 3:49 PM
To: Byrge, Nancy
Subject: RE: Otto Complaint Against Mayor Gore

Thank you for the questions. I will endeavor to have the answers for you tomorrow.

From: Byrge, Nancy [mailto:NByrge@hhoh.org]
Sent: Thursday, January 30, 2020 3:16 PM
To: McDonald, Gerald <GMcDonald@pselaw.com>
Subject: Otto Complaint Against Mayor Gore

Mr. McDonald,

To assist me in providing a fair and impartial assessment of Mr. Otto's complaint against Mayor Gore, please provide answers to the following questions:

- Did you have any communications with Mr. Otto regarding the residency issue prior to January 16, 2020? If so, please explain.
- In Mr. Otto's January 16, 2020 3:10 PM email, he provided two legal documents to you regarding Mr. Morgan's residency. When did you provide these documents to Mayor Gore and/or Council?
- In your January 16, 2020 4:46 PM email to Mr. Otto and Mr. Gore, both you and Mr. Morgan's attorney stated that "a case can be made for residency," but, you went on to state to Mr. Morgan that "the bottom line is I think it would be best if you resigned." Would you please explain why you didn't make the case for residency vs suggesting that Mr. Morgan resign?
- Did you discuss any options other than resigning with Mr. Morgan? If so, please explain.
- When did you advise Mr. Morgan that you were recommending that the Mayor "Commence removal proceedings?"
- In your January 17, 2020 9:47 PM email to Mayor Gore, 1904 and 1908 legal citations were provided. Were there no more recent cases of record addressing residency? Was the Ohio Supreme Court Ruling in Jon Husted's favor considered in Attorney Gaby Neal's research and findings? <http://www.supremecourt.ohio.gov/PIO/summaries/2009/1006/091707.asp> Does it have relevance to this complaint?
- As you also stated in your January 17, 2020 9:47 PM email, "The key is the intent to return" to his residence. Has Mr. Morgan ever stated to you that he had no intention to return to his residence?
- Did you discuss or recommend any other options that could be pursued in this matter to Mr. Morgan, Mr. Otto, or Mr. Gore?

Nancy L. Byrge

Vice Mayor
6131 Taylorsville Road
Huber Heights, OH 45424
937-716-2779
Sent from [Mail](#) for Windows 10

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Rodgers, Anthony

From: Gerald McDonald
Sent: Wednesday, January 29, 2020 1:16 PM
To: Byrge, Nancy
Subject: Handling the Mayor complaint

Nancy below is Rule 13 regarding complaints. Here is my suggestion on how things should be handled in order to assure you have followed the appropriate procedure.

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Gerald "Jerry" L. McDonald

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Rodgers, Anthony

From: Byrge, Nancy
Sent: Wednesday, January 29, 2020 2:49 PM
To: Gerald McDonald
Subject: RE: Handling the Mayor complaint

Jerry,

Thank you for your recommendations. That was how I planned to proceed. However, I had considered sitting down with Mr. Otto, but will communicate with everyone strictly through email.

Please review Item #3 in your message. There's language in there that is confusing.

Mr. Otto did not seek a remedy. How should I handle that?

Nancy L. Byrge

Vice Mayor

6131 Taylorsville Road

Huber Heights, OH 45424

937-716-2779

Sent from [Mail](#) for Windows 10

From: [McDonald, Gerald](#)
Sent: Wednesday, January 29, 2020 1:16 PM
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Subject: RE: Handling the Mayor complaint

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937-716-2779
Sent from [Mail](#) for Windows 10

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To: Gerald McDonald
Subject: RE: Handling the Mayor complaint

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Nancy L. Byrge

Vice Mayor

6131 Taylorsville Road

Huber Heights, OH 45424

937-716-2779

Sent from [Mail](#) for Windows 10

From: McDonald, Gerald <GMcDonald@pselaw.com>
Sent: Wednesday, January 29, 2020 5:14:54 PM
To: Byrge, Nancy <NByrge@hhoh.org>
Subject: RE: Handling the Mayor complaint

"notice address" it's not an "official" term to my knowledge, it's just the term some lawyers use to refer to where a person can have notices sent.

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3. To intentionally fail to follow 13.08(c) the Mayor would first have to have probable cause for removal. Did I, as law director think there was probably cause? Yes, I did. Did the Mayor? (You will have to ask him that and perhaps ask why he feels the way he does). As an FYI, after the Executive session I advised the Mayor that unless a complaint is filed (which it was) he did not need to take any further action at this time on the Morgan matter. seize property exists when facts and circumstances known to the officer would lead a reasonable person to believe that the item is contraband, is stolen, or constitutes evidence of a crime. W
4. Probable Cause exists when facts and circumstances known to the Mayor would lead a reasonable disinterested person to believe that Mr. Morgan does not reside in the City. As such, you should look at what facts and circumstances the Mayor considered. Do not interject your own thoughts. Simply ask, is the Mayors decision that there is not sufficient evidence to move this forward reasonable based on the info he has.

I am happy to assist with any questions to may have. I recommend that your findings be document and explained in detail. You should speak with anyone you deem relevant and summarize the conversation..

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

Attention:

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Rodgers, Anthony

From: Gerald McDonald
Sent: Wednesday, January 29, 2020 5:13 PM
To: Byrge, Nancy
Subject: FW: residency matter
Attachments: Motion of Sole Occupancy of Marital Residence.pdf; Motion to relist real estate filed by Seth.pdf

Here is what I received.

From: Otto, Glenn <GOtto@hhoh.org>
Sent: Thursday, January 16, 2020 3:10 PM
To: McDonald, Gerald <GMcDonald@pselaw.com>
Subject: Re: residency matter

Jerry,

It is Montgomery County case# 2019 DR 00787

I have attached the two documents that I mentioned.

Thank You,

Glenn T. Otto
Huber Heights City Council
At-Large Representative

From: McDonald, Gerald <GMcDonald@pselaw.com>
Sent: Thursday, January 16, 2020 3:01 PM
To: Otto, Glenn <GOtto@hhoh.org>
Subject: residency matter

Glen, can you send me the documents that you have regarding Mr. Morgan's residency?

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
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FILED
DOMESTIC RELATIONS COURT

2019 NOV 18 AM 10:49

CLERK OF COURTS
MONTGOMERY CO. OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

DEBRA L. MORGAN
7208 Howland Place
Huber Heights, Ohio 45424
DOB: 07/24/1981

CASE NO. 2019-DR-787
(Hon. Timothy D. Wood)

Plaintiff

-vs-

SETH A. MORGAN
7208 Howland Place
Huber Heights, Ohio 45424
DOB: 02/26/1978

MOTION FOR SOLE OCCUPANCY
OF MARITAL RESIDENCE

Defendant:

Now comes the Plaintiff, Debra L. Morgan (hereinafter "Plaintiff") by and through undersigned counsel and hereby respectfully moves this Court for an Order granting her sole and exclusive occupancy of the marital residence located at 7208 Howland Place, Huber Heights, Ohio 45424 because the Defendant, Seth A. Morgan ("Defendant") has been voluntarily absent from said property for an excess of thirty (30) days.

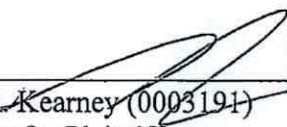
Respectfully Submitted:


Keith R. Kearney (0003191)
ROGERS & GREENBERG L.L.P.
2160 Kettering Tower
Dayton, Ohio 45423-1001
(937) 223-8171
Attorney for Plaintiff

ROGERS & GREENBERG
L.L.P.
ATTORNEYS AT LAW
40 N. MAIN STREET
SUITE 2160
DAYTON, OHIO 45423
(937) 223-8171
FAX: (937) 223-1649
www.rogersgreenberg.com

CERTIFICATE OF SERVICE

The undersigned states that a true and accurate copy of the foregoing was sent to Defendant's counsel, Mark D. Webb, 140 N. Main Street, Suite B, Springboro, Ohio 45066, on the same date as filing.



Keith R. Kearney (0003191)
Attorney for Plaintiff

Full

FILED
DOMESTIC RELATIONS COURT
2019 NOV 22 PM 1:30

CASE: 2019 DR 00787
0003485478
DR: NOT-1

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

| | | |
|-------------------------|---|-----------------------------------|
| DEBRA L. MORGAN | : | CASE NO. 2019 DR 00787 |
| 7208 Howland Place | : | |
| Huber Heights, OH 45424 | : | JUDGE TIMOTHY D. WOOD |
| DOB: 07/24/1981 | : | |
| | : | |
| PLAINTIFF | : | |
| | : | |
| v. | : | |
| | : | |
| SETH A. MORGAN | : | |
| 249 Catalpa Ct. | : | <u>MOTION TO LIST REAL ESTATE</u> |
| Beavercreek, OH 45440 | : | |
| DOB: 02/26/1978 | : | |
| | : | |
| DEFENDANT | : | |

Now comes Defendant, Seth A. Morgan (hereinafter "Father"), by and through Counsel, and hereby respectfully requests the Court issue an Order directing the parties to list the marital residence located at 7208 Howland Place, Huber Heights, Ohio 45424 for sale with an agreed upon realtor. Father additionally requests both parties be ordered to cooperate with the listing and sale of the marital real estate and that the Court retain jurisdiction of the sale and sale proceeds until further court ordered. For cause, Father does not wish to retain the marital real estate. It is unknown whether Mother wishes to retain the marital real estate. However, Father believes that neither party can afford to continue to reside within the marital real estate following the conclusion of this case. The parties' minor children are living with Father at his parent's residence.

WHEREFORE, Father requests the court set this matter for Hearing and issue an Order for the listing and sale of the residence located at 7208 Howland Place, Huber Heights, Ohio 45424. Father requests that this issue initially be heard with the Court at the Pre-Trial currently scheduled for December 6, 2019 at 8:45 a.m.

Respectfully submitted,



MARK D. WEBB (0085089)
SMITH, MEIER & WEBB, LPA
Counsel for Defendant/Father
140 North Main Street, Suite B
Springboro, Ohio 45066
P: (937) 748-2522
F: (937) 748-2712
E: mwebb@smw-law.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon *Counsel for Plaintiff, Keith R. Kearney*, 2160 Kettering Tower, Dayton, OH 45423, via email this 22nd day of November, 2019.



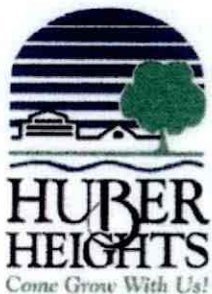
MARK D. WEBB (0085089)

Rodgers, Anthony

From: Webb, Don
Sent: Wednesday, January 29, 2020 11:38 AM
To: Byrge, Nancy
Subject: RE: Complaint

Thanks Nancy.

Don



Don Webb
City Council - Ward 2
City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424
City Hall: (937) 233-1423
City Fax: (937) 233-1272
Cell: (937) 478-5231
Email: dewebb@hhoh.org

From: [Byrge, Nancy](#)
Sent: Wednesday, January 29, 2020 10:30 AM
To: [Webb, Don](#)
Subject: FW: Complaint

Sorry for the delay in getting this to you. There were technical difficulties with your email address.

Nancy L. Byrge

Vice Mayor
6131 Taylorsville Road
Huber Heights, OH 45424
937-716-2779
Sent from [Mail](#) for Windows 10

From: [Otto, Glenn](#)
Sent: Monday, January 27, 2020 4:40 PM
To: [Byrge, Nancy](#)
Cc: [Gerald McDonald](#); [Rodgers, Anthony](#)
Subject: Complaint

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

Glenn T. Otto

Huber Heights City Council

At-Large Representative

Rodgers, Anthony

From: Otto, Glenn
Sent: Monday, January 27, 2020 4:40 PM
To: Byrge, Nancy
Cc: Gerald McDonald; Rodgers, Anthony
Subject: Complaint
Attachments: Gore complaint.pdf; Morgan residency email (1).pdf; Morgan residency email (2).pdf; Morgan residency email (3).pdf

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

*Glenn T. Otto
Huber Heights City Council
At-Large Representative*

Glenn T. Otto
6131 Taylorsville Rd
Huber Heights, Ohio 45424

01/27/2020

Vice Mayor Byrge,

Please consider this to be a formal written complaint against Mayor Jeff Gore as I believe at the time of delivery of this communication, that he has failed to perform his sworn duties as Mayor with what appear to be: (1) the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and (2) what appears to be a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information that I am providing, it appears obvious that the Mayor knew of the situation at hand, had received multiple legal recommendations from the City Attorney indicating a duty to take action, and then chose not to notify City Council members of the situation and chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Huber Heights City Charter Section 13.08 -Removal of official.

(C) The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal, which shall not be earlier than ten (10) days after the service of the notice to the accused person by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. (1) Failure to possess or maintain the qualifications of the office prescribed by this Charter;

Rules of Council XIII. COMPLAINTS

Complaints against employees are to be made to the City Manager and handled in accordance with the City Personnel Policy Manual. Complaints against Councilmembers, the City Manager, the Law Director, the Clerk of Council, or members of City boards or commissions appointed by Council are to be made to the Mayor. Complaints against the Mayor are to be made to the Vice Mayor. Complaints are required to be in writing.

Upon receipt of a complaint, the Mayor or Vice Mayor shall distribute a copy of the complaint to all members of the City Council. All actions taken to investigate and resolve the complaint shall be documented as a matter of record. The Mayor or Vice Mayor will complete a written response as soon as possible advising the initiator and the City Council of the disposition of the complaint. In those cases where resolution requires longer than ten (10) business days, an interim written response and target date for completion will be provided to the initiator of the

complaint and the City Council.

The following are comments from email communications between City Attorney Gerald McDonald, Mayor Gore and myself where I have highlighted what I believe will establish the basis for this complaint. I have also attached the full email strings as pdf files for your review.

From: McDonald, Gerald
Sent: Thursday, January 16, 2020 3:33 PM
To: Otto, Glenn

"You are correct that we have a serious issue if he is not currently living in the City."

From: McDonald, Gerald
Thu 1/16/2020 4:46 PM
To: Otto, Glenn and Gore, Jeff

"I told him that I understand the situation and that a case can be made for residency (it can) but the bottom line is I think it would be best if he resigns ASAP."

From: "McDonald, Gerald"
Date: January 17, 2020 at 9:47:49 AM EST
To: J Gore
Subject: Need to commence removal proceeding ATTY CLIENT MATTER

"In reviewing the matter and discussing it with Mr. Morgan on January 16, I am off the opinion that the issue of Mr. Morgan's residency statute's is not as evident as it was in October. By this I mean, I am not as certain that the departure from the Huber Heights should still be considered "temporary" nor am I sure that the facts back up an "indent" to return to Huber Heights. One of the key reasons for this is that Mr. Morgan petitioned to sell the marital home and has not secured other living arrangements in Ward 3."

"Please note, I am not making a determination that Mr. Morgan's residency has lapsed, but I do think that there is enough evidence present to constitute probable cause. Section 13.08 of the Charter provides: "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

"In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal. "

"I intend to send this email to Mr. Morgan (for obvious reasons) and Mr. Otto as a courtesy since he was the one that brought this to the forefront. I think we need to formally advise all of council about this issue and I would ask that you allow me to send this email to them as well. "

From: McDonald, Gerald

Fri 1/17/2020 9:52 AM

To: Otto, Glenn

"As an FYI, I have sent the Mayor a letter advising him to commence removal proceedings. I have not personally determined that residency has been lost, but I fully believe there is enough evidence to present probable cause to warrant commencement of the proceeding."

It is my sincere hope that personal opinions, people and politics are taken out of this issue; that the Rules of Council, City Charter and the Ohio Revised Code are abided by; that we choose to lead our community by upholding our oath of office to our residents and I look forward to your response as I remind you of the Oath of Office that we all have taken.

OATH OF OFFICE I, _____, do solemnly swear or affirm to support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all ordinances of the City of Huber Heights and that I will faithfully, honestly, and impartially discharge the duties of my office to the best of my abilities, so help me God.

In addition to the hope that you will see these findings of violations to the Ohio Revised Code and our City Charter to be factual and acted upon appropriately, I would also like to see the following questions answered.

1. Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?
2. Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?
3. Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

Sincerely,

Glenn T. Otto

Council Member At-Large, Huber Heights, Ohio

RE: residency matter

McDonald, Gerald <GMcDonald@pselaw.com>

Thu 1/16/2020 4:46 PM

To: Otto, Glenn <GOtto@hhoh.org>; Gore, Jeff <JGore@hhoh.org>

Glen and Jeff, I pride myself in being honest. In looking at my notes, I am very embarrassed to say that I was actually told much earlier than last month. What's worse is that my note about when he told me is actually from late October and not last month as I had honestly thought when I talked to both of you. Fact of the matter is I had not given it much thought given it was "temporary".

I talked with Seth, a few minutes ago, he indicated that he still considers himself temporarily away. He has discussed this with his divorce attorney several times and feels that a strong argument for residency can be made.

I told him that I understand the situation and that a case can be made for residency (it can) but the bottom line is I think it would be best if he resigns ASAP. I do not know his intentions at this time.

From: McDonald, Gerald

Sent: Thursday, January 16, 2020 3:33 PM

To: 'Otto, Glenn' <GOtto@hhoh.org>

Subject: RE: residency matter

Glen, thank you. Seth told me of the divorce last month and that he was temporarily staying at his parents. My understanding however was that it was all "recent" (as of last month when he told me) and temporary. I was not aware of the length of time he had purportedly been out as indicated in the document you provided, and I have no reason to believe the document is inaccurate. I was going to follow up with him in the next week or so to see what the situation is. You are correct that we have a serious issue if he is not currently living in the City. Listing the current house is not necessarily a problem if he has established another legal residence. I have reached out to him but have not heard back.

From: Otto, Glenn <GOtto@hhoh.org>

Sent: Thursday, January 16, 2020 3:10 PM

To: McDonald, Gerald <GMcDonald@pselaw.com>

Subject: Re: residency matter

Jerry,

It is Montgomery County case# 2019 DR 00787

I have attached the two documents that I mentioned.

Thank You,

*Glenn T. Otto
Huber Heights City Council*

At-Large Representative

From: McDonald, Gerald <GMcDonald@pselaw.com>
Sent: Thursday, January 16, 2020 3:01 PM
To: Otto, Glenn <GOtto@hhoh.org>
Subject: residency matter

Glen, can you send me the documents that you have regarding Mr. Morgan's residency?

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
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Morgan

McDonald, Gerald <GMcDonald@pselaw.com>

Fri 1/17/2020 9:52 AM

To: Otto, Glenn <GOtto@hhoh.org>

As an FYI, I have sent the Mayor a letter advising him to commence removal proceedings. I have not personally determined that residency has been lost, but I fully believe there is enough evidence to present probable cause to warrant commencement of the proceeding. At this point I ask that you keep my communications with you private as much of this (such as my letter to the mayor) is attorney client privilege at this time.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
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Scanned by SEG Cloud

Fwd: Need to commence removal proceeding ATTY CLIENT MATTER

McDonald, Gerald <GMcDonald@pselaw.com>

Fri 1/17/2020 6:32 PM

To: Otto, Glenn <GOtto@hhoh.org>

Want to keep you in the loop. Please note this is still Atty client matter

Sent from my iPhone

Begin forwarded message:

From: "McDonald, Gerald" <GMcDonald@pselaw.com>

Date: January 17, 2020 at 9:47:49 AM EST

To: J Gore <Jgore@hhoh.org>

Subject: Need to commence removal proceeding ATTY CLIENT MATTER

Mr. Gore,

After the October 22, 2019 Council Work Session, I was approached by Council Member Morgan. He advised me that he was going through a divorce and that he and his children were temporarily staying with his parents in Beavercreek. He asked how that would affect his office as Ward Three Councilmember. I told him if it was temporary, it would not be an issue. However, if he was not going to return to his marital home, he would need to secure another residence in Ward Three to maintain his council eligibility.

The next day, I requested attorney Gaby Neal of my office look into the matter and provide me with legal research on the issue. I was given a memo on Tuesday October 29 which provided that when construing similar provisions of the Ohio Revised Code (R.C. 731.02 which provides: "A member who ceases to possess any of such qualifications, or removes from the member's ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit the member's office"), courts have noted "The word 'remove' in this section refers not to temporary absence, but to a permanent removal of residence..." In re Petition of Gorey, 2 Ohio N.P. (n.s.) 389, 1904 Ohio Misc. LEXIS 291 (Ohio P. Ct. Sept. 1, 1904). "A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or county of this state for temporary purposes merely, with an intention of returning." STATE ex rel. WEBER, 1908 Ohio Misc. LEXIS 398, *4-5, 22 Ohio C.C. (n.s.) 314, 316.

Similarly, when looking at residency for purposes of voter eligibility, Ohio Revised Code section 3503.02 states that

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(B) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(C) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.

(D) The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence."

As you can see, a temporary departure from a residence does not disqualify a council member from serving. The key is the intent to return. As Mr. Morgan indicated that it was his intent to return when we spoke in October, I did not consider the matter an urgent situation at that time.

While I had the matter on my mind I did not timely follow up with Mr. Morgan for status. When I was contacted by Mr. Otto on January 16 and advised that he had obtained copies of court documents that indicated Mr. Morgan had been out of the home for in excess of 30 days and had petitioned the court to sell the house I was quite surprised. As I mentioned to you and Mr. Otto, I had lost the sense of timing on this matter and did not realize that two months had passed since I was initially advised by of the divorce proceedings.

In reviewing the matter and discussing it with Mr. Morgan on January 16, I am off the opinion that the issue of Mr. Morgan's residency statute's is not as evident as it was in October. By this I mean, I am not as certain that the departure from the Huber Heights should still be considered "temporary" nor am I sure that the facts back up an "indent" to return to Huber Heights. One of the key reasons for this is that Mr. Morgan petitioned to sell the marital home and has not secured other living arrangements in Ward 3.

Please note, I am not making a determination that Mr. Morgan's residency has lapsed, but I do think that there is enough evidence present to constitute probable cause. Section 13.08 of the Charter provides: "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

Section 4.03 of the Charter titled "Eligibility" provides:

Candidates for the offices of Councilmember and Mayor shall be qualified electors of the City at the time of filing their nominating petitions, shall have maintained their residency in the City at least one (1) year immediately preceding the election, and shall maintain residency during their term of office. Candidates for the offices of Councilmember to be elected by districts shall have resided in their respective districts for at least one year immediately preceding the election and shall maintain such residency during their term of office. Councilmembers, including the Mayor, who cease to meet the preceding

eligibility requirements during their term of office shall forfeit their offices pursuant to Section 13.08 of this Charter.” Unlike the residency requirements of certain employees of the City, which has been deemed to be unconstitutional, the residency provision in Huber Heights Charter for elected officials is mandatory and enforceable. Under Charter Section 13.08 “Removal of Official” a Councilmember “shall be removed” for “the failure to possess or maintain the qualifications of the office prescribed by this Charter.”

In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal.

I do point out that Charter Section 13.08(D) of this provision provides “[t]he removal of an official or the occurrence of any of the causes permitting the removal shall not invalidate any official action of the Council in which the member participated.” As such we will not need to ratify any previously passed legislation.

In the past, the following time line has been used:

1. Mayor serves as the Charging Official with respect to another Council member’s removal. (13.08(B)).
2. Mayor has reason to believe there is probable cause for removal based on one of the 5 enumerated causes. (13.08(C)) In this case, section 13.08(C)(1) “Failure to possess or maintain the qualifications of the office prescribed by this Charter”. Maintaining the qualifications is required by Section 4.03
3. Mayor to bring issue to Council in order to get authority to proceed with securing third party legal counsel (County Prosecutor or Special Council).
4. Law Director requests the County Prosecutor or his designee to prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If the County Prosecutor refuses to accept the responsibility, Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any reviews thereof by the Courts. (13.08(G))
5. Hearing date to be determined. The hearing cannot occur until at least 10 days after providing Councilmember with formal notice.
6. Mayor gives written notice of (1) the alleged cause for removal cause AND (2) time/date/place of hearing. Notice must be given by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. (13.08(C))
7. Under 13.08(F) the Councilmember charged with conduct constituting grounds for removal from office shall be entitled to a public hearing on demand, but in any case, a record of the proceedings shall be made and preserved.
8. If a public hearing is demanded, a notice of such hearing shall be published in one or more newspapers of general circulation in the City and posted on available public media at least one (1) week in advance of the hearing, and in such an event, the Charging Official may reschedule the time, date and place of the hearing to accommodate the publication of the notice. If the hearing is rescheduled, the Charging Official shall notify the accused person of such fact.
9. At hearing Council shall hear, provide an opportunity to the accused person to be heard and present defenses, and determine whether the accused person shall be removed from office. Council shall be the judge of the grounds for removal from office and shall conduct the proceedings relative to removal. The Council shall have the power

to subpoena witnesses, administer oaths and require the producing of evidence, either on its own motion or through the process of any appropriate court or officer thereof.

10. A record of the proceedings must be made and preserved. Hearing can be adjourned

11. To remove an official there must be a two-thirds (2/3) vote of the Councilmembers then holding office, provided that the accused Councilmember shall not vote on any matter during the removal procedure and shall not be counted in determining required majorities. 13.08(C)).

Seven (7) Council members would be voting. Need 5 of the 7 to constitute 2/3. Mayor does not vote in this proceeding. (Charter section 4.04 "The Mayor shall be a member of Council but shall not have the right to vote on issues before Council except in the cases where the vote for the remaining members of Council results in a tie vote, in which cases the Mayor must cast the deciding vote.

I intend to send this email to Mr. Morgan (for obvious reasons) and Mr. Otto as a courtesy since he was the one that brought this to the forefront. I think we need to formally advise all of council about this issue and I would ask that you allow me to send this email to them as well.

Please note this is atty client matter and no part of this email should be released publicly.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

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Rodgers, Anthony

From: Gerald McDonald
Sent: Monday, January 27, 2020 4:46 PM
To: Byrge, Nancy
Cc: Rodgers, Anthony; Otto, Glenn
Subject: RE: Complaint

Nancy, I will review this tomorrow and provide guidance on its handling.

From: Otto, Glenn <GOtto@hhoh.org>
Sent: Monday, January 27, 2020 4:40 PM
To: Byrge, Nancy <NByrge@hhoh.org>
Cc: McDonald, Gerald <GMcDonald@pselaw.com>; Rodgers, Anthony <ARodgers@hhoh.org>
Subject: Complaint

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

*Glenn T. Otto
Huber Heights City Council
At-Large Representative*

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Rodgers, Anthony

From: Gerald McDonald
Sent: Monday, January 27, 2020 5:14 PM
To: Byrge, Nancy
Cc: Rodgers, Anthony; Otto, Glenn
Subject: RE: Complaint

Nancy, I took a quick look at the Rules of Council and see that when a written complaint is filed you are to 'immediately' provide it to all of council. As such I recommend sending it out to council, without any comment, today. I will touch base with you tomorrow as to process and documentation recommendations.

Rules of Council Section 13. "Upon receipt of a complaint, the Mayor or Vice Mayor shall distribute a copy of the complaint to all members of the City Council."

From: McDonald, Gerald
Sent: Monday, January 27, 2020 4:46 PM
To: Byrge, Nancy <NByrge@hhoh.org>
Cc: Rodgers, Anthony <ARodgers@hhoh.org>; 'Otto, Glenn' <GOtto@hhoh.org>
Subject: RE: Complaint

Nancy, I will review this tomorrow and provide guidance on its handling.

From: Otto, Glenn <GOtto@hhoh.org>
Sent: Monday, January 27, 2020 4:40 PM
To: Byrge, Nancy <NByrge@hhoh.org>
Cc: McDonald, Gerald <GMcDonald@pselaw.com>; Rodgers, Anthony <ARodgers@hhoh.org>
Subject: Complaint

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

*Glenn T. Otto
Huber Heights City Council
At-Large Representative*

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Rodgers, Anthony

From: Gore, Jeff
Sent: Tuesday, January 28, 2020 8:40 AM
To: Byrge, Nancy
Subject: Re: Complaint

Vice Mayor Byrge,

I'd be happy to answer any and all questions that you may have including the 3 direct questions that Mr. Otto requested in his complaint. You know what my work schedule is like so anytime after approximately 3:30 each day I can make myself available for you.

Respectfully

Jeff

Get [Outlook for iOS](#)

From: Byrge, Nancy <NByrge@hhoh.org>
Sent: Tuesday, January 28, 2020 8:28:34 AM
To: Gerald McDonald <GMcDonald@pselaw.com>; Rodgers, Anthony <ARodgers@hhoh.org>; Shaw, Richard <RShaw@hhoh.org>; Morgan, Seth <SMorgan@hhoh.org>; Campbell, Mark <MCampbell@hhoh.org>; Gore, Jeff <JGore@hhoh.org>; Otto, Glenn <GOtto@hhoh.org>; Lyons, Ed <ELyons@hhoh.org>; Hill, Andy <AHill@hhoh.org>; Webb, David <DWebb@hhoh.org>
Subject: FW: Complaint

FYI.

Nancy L. Byrge

Vice Mayor
6131 Taylorsville Road
Huber Heights, OH 45424
937-716-2779
Sent from [Mail](#) for Windows 10

From: [Otto, Glenn](#)
Sent: Monday, January 27, 2020 4:40 PM
To: [Byrge, Nancy](#)
Cc: [Gerald McDonald](#); [Rodgers, Anthony](#)
Subject: Complaint

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

Glenn T. Otto
Huber Heights City Council
At-Large Representative

Rodgers, Anthony

From: Otto, Glenn
Sent: Monday, January 27, 2020 4:40 PM
To: Byrge, Nancy
Cc: Gerald McDonald; Rodgers, Anthony
Subject: Complaint
Attachments: Gore complaint.pdf; Morgan residency email (1).pdf; Morgan residency email (2).pdf; Morgan residency email (3).pdf

Vice Mayor Byrge,

Attached, please find a complaint which is accompanied with pertinent supporting documents.

I look forward to your response.

Thank You,

Glenn T. Otto
Huber Heights City Council
At-Large Representative

RECEIVED ON:

JAN 27 2020

CLERK OF COUNCIL

Glenn T. Otto
6131 Taylorsville Rd
Huber Heights, Ohio 45424

01/27/2020

Vice Mayor Byrge,

Please consider this to be a formal written complaint against Mayor Jeff Gore as I believe at the time of delivery of this communication, that he has failed to perform his sworn duties as Mayor with what appear to be: (1) the intentional violation or disregard of Section 13.08(C) of the Huber Heights City Charter and (2) what appears to be a refusal to enforce the Huber Heights City Charter Section 13.08(C)(1) and Ohio Revised Code R.C. 731.02.

Based on the information that I am providing, it appears obvious that the Mayor knew of the situation at hand, had received multiple legal recommendations from the City Attorney indicating a duty to take action, and then chose not to notify City Council members of the situation and chose not to follow the advice and legal recommendations of the City Attorney on this matter.

Huber Heights City Charter Section 13.08 -Removal of official.

(C) The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal, which shall not be earlier than ten (10) days after the service of the notice to the accused person by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. (1) Failure to possess or maintain the qualifications of the office prescribed by this Charter;

Rules of Council XIII. COMPLAINTS

Complaints against employees are to be made to the City Manager and handled in accordance with the City Personnel Policy Manual. Complaints against Councilmembers, the City Manager, the Law Director, the Clerk of Council, or members of City boards or commissions appointed by Council are to be made to the Mayor. Complaints against the Mayor are to be made to the Vice Mayor. Complaints are required to be in writing.

Upon receipt of a complaint, the Mayor or Vice Mayor shall distribute a copy of the complaint to all members of the City Council. All actions taken to investigate and resolve the complaint shall be documented as a matter of record. The Mayor or Vice Mayor will complete a written response as soon as possible advising the initiator and the City Council of the disposition of the complaint. In those cases where resolution requires longer than ten (10) business days, an interim written response and target date for completion will be provided to the initiator of the

complaint and the City Council.

The following are comments from email communications between City Attorney Gerald McDonald, Mayor Gore and myself where I have highlighted what I believe will establish the basis for this complaint. I have also attached the full email strings as pdf files for your review.

From: McDonald, Gerald
Sent: Thursday, January 16, 2020 3:33 PM
To: Otto, Glenn

"You are correct that we have a serious issue if he is not currently living in the City."

From: McDonald, Gerald
Thu 1/16/2020 4:46 PM
To: Otto, Glenn and Gore, Jeff

"I told him that I understand the situation and that a case can be made for residency (it can) but the bottom line is I think it would be best if he resigns ASAP."

From: "McDonald, Gerald"
Date: January 17, 2020 at 9:47:49 AM EST
To: J Gore
Subject: Need to commence removal proceeding ATTY CLIENT MATTER

"In reviewing the matter and discussing it with Mr. Morgan on January 16, I am off the opinion that the issue of Mr. Morgan's residency statute's is not as evident as it was in October. By this I mean, I am not as certain that the departure from the Huber Heights should still be considered "temporary" nor am I sure that the facts back up an "indent" to return to Huber Heights. One of the key reasons for this is that Mr. Morgan petitioned to sell the marital home and has not secured other living arrangements in Ward 3."

"Please note, I am not making a determination that Mr. Morgan's residency has lapsed, but I do think that there is enough evidence present to constitute probable cause. Section 13.08 of the Charter provides: "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

"In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal. "

"I intend to send this email to Mr. Morgan (for obvious reasons) and Mr. Otto as a courtesy since he was the one that brought this to the forefront. I think we need to formally advise all of council about this issue and I would ask that you allow me to send this email to them as well. "

From: McDonald, Gerald

Fri 1/17/2020 9:52 AM

To: Otto, Glenn

"As an FYI, I have sent the Mayor a letter advising him to commence removal proceedings. I have not personally determined that residency has been lost, but I fully believe there is enough evidence to present probable cause to warrant commencement of the proceeding."

It is my sincere hope that personal opinions, people and politics are taken out of this issue; that the Rules of Council, City Charter and the Ohio Revised Code are abided by; that we choose to lead our community by upholding our oath of office to our residents and I look forward to your response as I remind you of the Oath of Office that we all have taken.

OATH OF OFFICE I, _____, do solemnly swear or affirm to support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all ordinances of the City of Huber Heights and that I will faithfully, honestly, and impartially discharge the duties of my office to the best of my abilities, so help me God.

In addition to the hope that you will see these findings of violations to the Ohio Revised Code and our City Charter to be factual and acted upon appropriately, I would also like to see the following questions answered.

1. Why was the Law Director's provided direction/opinion not followed by the "Charging Officer"?
2. Why did the Mayor not allow the Law Director to share the January 17, 2020 email with all members of Council as requested?
3. Why was the complaint, from the Law Director to the Mayor, not acted upon within 10 days?

Sincerely,

Glenn T. Otto

Council Member At-Large, Huber Heights, Ohio

RE: residency matter

McDonald, Gerald <GMcDonald@pselaw.com>

Thu 1/16/2020 4:46 PM

To: Otto, Glenn <GOtto@hhoh.org>; Gore, Jeff <JGore@hhoh.org>

Glen and Jeff, I pride myself in being honest. In looking at my notes, I am very embarrassed to say that I was actually told much earlier than last month. What's worse is that my note about when he told me is actually from late October and not last month as I had honestly thought when I talked to both of you. Fact of the matter is I had not given it much thought given it was "temporary".

I talked with Seth, a few minutes ago, he indicated that he still considers himself temporarily away. He has discussed this with his divorce attorney several times and feels that a strong argument for residency can be made.

I told him that I understand the situation and that a case can be made for residency (it can) but the bottom line is I think it would be best if he resigns ASAP. I do not know his intentions at this time.

From: McDonald, Gerald

Sent: Thursday, January 16, 2020 3:33 PM

To: 'Otto, Glenn' <GOtto@hhoh.org>

Subject: RE: residency matter

Glen, thank you. Seth told me of the divorce last month and that he was temporarily staying at his parents. My understanding however was that it was all "recent" (as of last month when he told me) and temporary. I was not aware of the length of time he had purportedly been out as indicated in the document you provided, and I have no reason to believe the document is inaccurate. I was going to follow up with him in the next week or so to see what the situation is. You are correct that we have a serious issue if he is not currently living in the City. Listing the current house is not necessarily a problem if he has established another legal residence. I have reached out to him but have not heard back.

From: Otto, Glenn <GOtto@hhoh.org>

Sent: Thursday, January 16, 2020 3:10 PM

To: McDonald, Gerald <GMcDonald@pselaw.com>

Subject: Re: residency matter

Jerry,

It is Montgomery County case# 2019 DR 00787

I have attached the two documents that I mentioned.

Thank You,

Glenn T. Otto

Huber Heights City Council

At-Large Representative

From: McDonald, Gerald <GMcDonald@pselaw.com>
Sent: Thursday, January 16, 2020 3:01 PM
To: Otto, Glenn <GOtto@hhoh.org>
Subject: residency matter

Glen, can you send me the documents that you have regarding Mr. Morgan's residency?

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

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Morgan

McDonald, Gerald <GMcDonald@pselaw.com>

Fri 1/17/2020 9:52 AM

To: Otto, Glenn <GOtto@hhoh.org>

As an FYI, I have sent the Mayor a letter advising him to commence removal proceedings. I have not personally determined that residency has been lost, but I fully believe there is enough evidence to present probable cause to warrant commencement of the proceeding. At this point I ask that you keep my communications with you private as much of this (such as my letter to the mayor) is attorney client privilege at this time.

Gerald "Jerry" L. McDonald
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Fwd: Need to commence removal proceeding ATTY CLIENT MATTER

McDonald, Gerald <GMcDonald@pselaw.com>

Fri 1/17/2020 6:32 PM

To: Otto, Glenn <GOtto@hhoh.org>

Want to keep you in the loop. Please note this is still Atty client matter

Sent from my iPhone

Begin forwarded message:

From: "McDonald, Gerald" <GMcDonald@pselaw.com>

Date: January 17, 2020 at 9:47:49 AM EST

To: J Gore <Jgore@hhoh.org>

Subject: Need to commence removal proceeding ATTY CLIENT MATTER

Mr. Gore,

After the October 22, 2019 Council Work Session, I was approached by Council Member Morgan. He advised me that he was going through a divorce and that he and his children were temporarily staying with his parents in Beavercreek. He asked how that would affect his office as Ward Three Councilmember. I told him if it was temporary, it would not be an issue. However, if he was not going to return to his marital home, he would need to secure another residence in Ward Three to maintain his council eligibility.

The next day, I requested attorney Gaby Neal of my office look into the matter and provide me with legal research on the issue. I was given a memo on Tuesday October 29 which provided that when construing similar provisions of the Ohio Revised Code (R.C. 731.02 which provides: "A member who ceases to possess any of such qualifications, or removes from the member's ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit the member's office"), courts have noted "The word 'remove' in this section refers not to temporary absence, but to a permanent removal of residence..." In re Petition of Gorey, 2 Ohio N.P. (n.s.) 389, 1904 Ohio Misc. LEXIS 291 (Ohio P. Ct. Sept. 1, 1904). "A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or county of this state for temporary purposes merely, with an intention of returning." STATE ex rel. WEBER, 1908 Ohio Misc. LEXIS 398, *4-5, 22 Ohio C.C. (n.s.) 314, 316.

Similarly, when looking at residency for purposes of voter eligibility, Ohio Revised Code section 3503.02 states that

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(B) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(C) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.

(D) The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence."

As you can see, a temporary departure from a residence does not disqualify a council member from serving. The key is the intent to return. As Mr. Morgan indicated that it was his intent to return when we spoke in October, I did not consider the matter an urgent situation at that time.

While I had the matter on my mind I did not timely follow up with Mr. Morgan for status. When I was contacted by Mr. Otto on January 16 and advised that he had obtained copies of court documents that indicated Mr. Morgan had been out of the home for in excess of 30 days and had petitioned the court to sell the house I was quite surprised. As I mentioned to you and Mr. Otto, I had lost the sense of timing on this matter and did not realize that two months had passed since I was initially advised by of the divorce proceedings.

In reviewing the matter and discussing it with Mr. Morgan on January 16, I am off the opinion that the issue of Mr. Morgan's residency statute's is not as evident as it was in October. By this I mean, I am not as certain that the departure from the Huber Heights should still be considered "temporary" nor am I sure that the facts back up an "indent" to return to Huber Heights. One of the key reasons for this is that Mr. Morgan petitioned to sell the marital home and has not secured other living arrangements in Ward 3.

Please note, I am not making a determination that Mr. Morgan's residency has lapsed, but I do think that there is enough evidence present to constitute probable cause. Section 13.08 of the Charter provides: "The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of the Mayor or Councilmember, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal..."

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Candidates for the offices of Councilmember and Mayor shall be qualified electors of the City at the time of filing their nominating petitions, shall have maintained their residency in the City at least one (1) year immediately preceding the election, and shall maintain residency during their term of office. Candidates for the offices of Councilmember to be elected by districts shall have resided in their respective districts for at least one year immediately preceding the election and shall maintain such residency during their term of office. Councilmembers, including the Mayor, who cease to meet the preceding

eligibility requirements during their term of office shall forfeit their offices pursuant to Section 13.08 of this Charter.” Unlike the residency requirements of certain employees of the City, which has been deemed to be unconstitutional, the residency provision in Huber Heights Charter for elected officials is mandatory and enforceable. Under Charter Section 13.08 “Removal of Official” a Councilmember “shall be removed” for “the failure to possess or maintain the qualifications of the office prescribed by this Charter.”

In my opinion there is probable cause to believe that Mr. Morgan does not reside in the City and as Mayor I believe you need act as a "Charging Official" under Section 13.08(B) of the Charter and give notice of the alleged cause for removal.

I do point out that Charter Section 13.08(D) of this provision provides “[t]he removal of an official or the occurrence of any of the causes permitting the removal shall not invalidate any official action of the Council in which the member participated.” As such we will not need to ratify any previously passed legislation.

In the past, the following time line has been used:

1. Mayor serves as the Charging Official with respect to another Council member’s removal. (13.08(B)).
2. Mayor has reason to believe there is probable cause for removal based on one of the 5 enumerated causes. (13.08(C)) In this case, section 13.08(C)(1) “Failure to possess or maintain the qualifications of the office prescribed by this Charter”. Maintaining the qualifications is required by Section 4.03
3. Mayor to bring issue to Council in order to get authority to proceed with securing third party legal counsel (County Prosecutor or Special Council).
4. Law Director requests the County Prosecutor or his designee to prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If the County Prosecutor refuses to accept the responsibility, Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any reviews thereof by the Courts. (13.08(G))
5. Hearing date to be determined. The hearing cannot occur until at least 10 days after providing Councilmember with formal notice.
6. Mayor gives written notice of (1) the alleged cause for removal cause AND (2) time/date/place of hearing. Notice must be given by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. (13.08(C))
7. Under 13.08(F) the Councilmember charged with conduct constituting grounds for removal from office shall be entitled to a public hearing on demand, but in any case, a record of the proceedings shall be made and preserved.
8. If a public hearing is demanded, a notice of such hearing shall be published in one or more newspapers of general circulation in the City and posted on available public media at least one (1) week in advance of the hearing, and in such an event, the Charging Official may reschedule the time, date and place of the hearing to accommodate the publication of the notice. If the hearing is rescheduled, the Charging Official shall notify the accused person of such fact.
9. At hearing Council shall hear, provide an opportunity to the accused person to be heard and present defenses, and determine whether the accused person shall be removed from office. Council shall be the judge of the grounds for removal from office and shall conduct the proceedings relative to removal. The Council shall have the power

to subpoena witnesses, administer oaths and require the producing of evidence, either on its own motion or through the process of any appropriate court or officer thereof.

10. A record of the proceedings must be made and preserved. Hearing can be adjourned

11. To remove an official there must be a two-thirds (2/3) vote of the Councilmembers then holding office, provided that the accused Councilmember shall not vote on any matter during the removal procedure and shall not be counted in determining required majorities. 13.08(C)).

Seven (7) Council members would be voting. Need 5 of the 7 to constitute 2/3. Mayor does not vote in this proceeding. (Charter section 4.04 "The Mayor shall be a member of Council but shall not have the right to vote on issues before Council except in the cases where the vote for the remaining members of Council results in a tie vote, in which cases the Mayor must cast the deciding vote.

I intend to send this email to Mr. Morgan (for obvious reasons) and Mr. Otto as a courtesy since he was the one that brought this to the forefront. I think we need to formally advise all of council about this issue and I would ask that you allow me to send this email to them as well.

Please note this is atty client matter and no part of this email should be released publicly.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

Attention:

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Rodgers, Anthony

From: Byrge, Nancy
Sent: Thursday, February 6, 2020 2:45 PM
To: Otto, Glenn; Gore, Jeff; Rodgers, Anthony; Morgan, Seth; Campbell, Mark; Lyons, Ed; Hill, Andy; Don Webb; Shaw, Richard
Subject: Mr. Otto's Complaint against Gore - Extension for Response

This is official notification that I require more time to evaluate the information provided.

My findings will be provided no later than Monday, February 10, 2020.