



CITY OF DUNKIRK

OFFICE OF THE MAYOR

City Hall, 342 Central Avenue, Dunkirk, New York 14048

www.dunkirktoday.com

WILFRED ROSAS

Mayor

(716) 366-9882

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December 1, 2020

Via Hand-Delivery & Email

Mr. Edwin Ramos
Dunkirk City Clerk
342 Central Avenue
Dunkirk, New York 14048

Re: Line Item Veto Message: Budget Resolution #113-2020

Dear Mr. Ramos:

I write to inform you that I am exercising my veto authority as granted by Dunkirk City Charter Section 3.03 and Dunkirk City Code Section 2-3.04 to veto several line item amendments made to the proposed 2021 budget by the Common Council via Budget Resolution #113-2020. To be clear, none the amendments made to the proposed 2021 budget lower taxes, fees or city operating costs. They are budget neutral, and made for political purposes, not for fiscal ones.

Line Item Veto #1 – Reduction in Law Department Head Salary Line of \$25,000.00

1. The City Attorney currently makes \$62,000, which is equivalent to 69% part time status. I budget \$70,000 for the position to give me salary flexibility should the current City Attorney leave the position, and I have to recruit a replacement. He was originally hired at \$45,000 in 2017 as a 20 hour per week 50% part time City Attorney. I raised his salary by \$15,000 to increase his availability in 2018, as it became apparent 20 hours was not enough to handle all the City had on its plate, as we push to move the City forward. I raised his salary again by \$2,000 in 2019.

According to the Council, the 2 reasons cited for the salary reduction were fiscal responsibility, and the lack of a resolution specifically granting a raise to the City Attorney. Neither holds up upon further scrutiny. On the former, the reduction of \$25,000 from the \$24 million dollar city budget represents .1% of the budget, and the move does **not reduce** the budget. The money is merely shifted to other Council priorities. Secondly, the City Attorney researched the issue of whether salary raises as part of budget

resolutions counts as Council approval, since said raises and others were approved by the Council in 2018 and 2019. Neither the Charter nor the Code state that the resolutions must be done the way Council assumes. The Charter allows for liberal interpretation to achieve its goals. Further corroboration with the New York State Council of Mayors (NYCOM) and the municipal department at the law firm of Hodgson Russ LLP confirm the City Attorney's conclusion.

Next, as per the enclosed Memo from City Treasurer Mark Woods, a 25 year veteran of City Hall, attached hereto as **Exhibit A**, cutting the salary and available hours of the City Attorney potentially increases the need for outside counsel, which cost much more per billable hour than the hourly rate currently paid to the City Attorney. Furthermore, per the enclosed Memo from City Fiscal Affairs Officer Marsha Beach, the going rate for a full time city attorney with 5+ years in the State of New York is \$81,370. For a bilingual city attorney with the same amount of experience, the average salary is \$92,695. Said Memo is hereto attached as **Exhibit B**.

Lastly, in comments made to the press, Council cites the fact that the City Attorney sued the Council, and incurred additional outside counsel costs, as if this happened in a vacuum, and he did this on his own. Said lawsuit was filed 2 months after the Council, despite warnings from the City Attorney beforehand, used provisions that do not even legally belong in the Charter to fire several members of the Mayor's cabinet, after several executive sessions where Council was given opportunities to resolve the issue amicably without resort to litigation. The City Attorney did his job. He filed the lawsuit per my instruction, after consulting with other Mayors, NYCOM, and several law firms. The Council majority set that lawsuit in motion by its actions, and not the actions of the City Attorney.

Line Item Veto #2 – Removal of the \$21,000 part-time budget line from Development Department

2. Because of COVID-19 and the shutdowns ordered by the state and my administration in response, all usual City-sponsored events and concerts for the summer season were cancelled in 2020, and possibly some may be cancelled or postponed in 2021, as the virus infections rates surge, until vaccines being developed become readily available. Because of this fact, to shrink the budget a bit, I did not fund the community planner position also known as the special events coordinator position. However, I did propose a budget line of part time seasonal workers of \$21,000, to help with events, especially in the summer, should conditions surrounding the pandemic improve. Given the possibility of a reduced events season, this line is roughly half of what was budgeted in prior years for part time seasonal workers in the Development Department.

Council has saw fit to remove this budget line, thus leaving no funds budgeted for staffing to handle special events for the City. Our Planning & Development Director Rebecca Wurster has opined about this in her Memo to the Mayor and Council, attached hereto as **Exhibit C**. Given the additional investment into the Pier, the Waterfront District, and the coming Lake Shore Drive Complete Streets Project, Ms. Wurster feels it is irresponsible not to budget any funds for part time assistance to man events, monitor locations, and do routine maintenance and trash pickup working in conjunction with our

Department of Public Works staff. As City Treasurer Woods states in his Memo, "it is not feasible or rational to rely on volunteers to staff and be held accountable for the outcome of these events." See Exhibit A. Ms. Beach the Fiscal Affairs Officer also warns against not properly budgeting for seasonal staffing for city events in her Memo. See Exhibit B.

Line Item Veto #3 – Removal of the \$45,000 DLDC allocation from Development Department

3. In a move that still shows lack of understanding of the utility of the City having a Local Development Corporation (LDC), and how it operates, the Council has amended the proposed budget to remove the \$45,000 city allocation to the Dunkirk Local Development Corporation (DLDC). Upon information and belief, this was a political move to punish the DLDC for perceived irregularities and problems that have no basis in fact. It is a classic case of cutting one's nose off to spite his face. It is wrong, and ill-conceived.

First, allow me to define what an LDC is. The following comes from Harris Beach PLLC's *Economic Development Handbook*, the 2019 17th Edition:

LDCs are formed and empowered to conduct certain projects pursuant to Not-For-Profit Corporation Law (N-PCL) §1411. LDCs were frequently formed by local business or civic leaders to administer a revolving loan fund. The State legislature authorized the formation of LDCs in 1967 to enable municipalities to dispose of municipal land balancing issues other than "highest responsible bidder," which normally governs municipal real property sales, and to access funding for economic development.

LDCs are predominantly formed by, and work closely with, municipalities and industrial development agencies (IDAs) by providing not only greater transactional flexibility for undertaking economic development projects, but also added liability protection because the LDC is a bankruptcy remote entity.

LDCs can also act as pass throughs for donations, sponsorships and in-kind contributions because of their 501c(3) charitable statuses. This attribute is why most City-sponsored events like the Pier concert series are run through the DLDC.

Here, as Mr. Wood's Memo highlights, the removal of the DLDC budget allocation does not hurt the Mayor or anyone affiliated with him. Those funds are used to fund the \$30,000 per year cost of 4th of July fireworks, and to pay for the taxes, utilities, maintenance and other costs associated with the DLDC's ownership of several properties it purchased for redevelopment long before I became Mayor. Additionally, running the cost of the fireworks vendor through the DLDC—which hasn't raised its rates in years—avoids the public bidding process and potential increased costs due to said process if it is run through the City directly. Lastly, running the fireworks and related events through the DLDC allows donors to get a tax deduction for their donations, which is not easily achieved if donated directly to the City itself.

Ms. Beach also correctly points out the fireworks aren't budgeted for anywhere else in the proposed budget. Eliminating the DLDC allocation effectively cancels the City's 2021 4th of July fireworks display.

Line Item Veto #4 – Additional Allocation of \$10,000 to Council for Retained Counsel

4. As Mr. Woods states in his Memo, allocation of funds to the Council for its own retained counsel sets a bad precedent as the Charter and Code already provide that the City Attorney works on behalf of the entire City government, not just the Mayor, or certain departments. He states that this "is contrary to the Charter of the City of Dunkirk and to those individuals who helped establish the document." *See* Exhibit A.

I could not agree more with our City Treasurer. Our City attorney serves all City departments and elected officials, but does so at the pleasure of the Mayor, per the City Charter. This fact bothers the Council majority, who came into office with an agenda to challenge me and my administration before they were even inaugurated. In spite of several attempts to fire him, and several attempts to discredit him, the City Attorney has professionally and kindly worked with the Council as much as possible. There is no need for Council to have retained counsel budgeted for, at billable rates similar to what Ms. Beach noted in her Memo, which are much, much higher than the rate of pay of our City Attorney. *See* Exhibit B.

Lastly, if Council argues that a retained counsel line is needed due to pending litigation between the administration and Council, I will remind all that pay attention that the Council acted first using illegal provisions that did not belong in the Charter to fire members of my administration, and then refused to address the situation it created for 2 months. This in turn led to the filing of the Article 78 petition, which seems to have offended some of the Council members. An Article 78 petition is neither a criminal case that seeks charges against the Council majority; nor is it a civil case seeking monetary damages. It is a type of case designed to get a ruling from a judge on a governmental dispute.

It is for the rationales above that I am exercising my veto authority on this resolution. I don't believe it is in the city's best interests. I hope this Council understands and elects not to override the veto.

Sincerely,



Wilfred Rosas
Mayor, City of Dunkirk

CC: Dunkirk Common Council
The Observer
WDOE

Enclosures

Exhibit A



CITY OF DUNKIRK
OFFICE OF THE TREASURER
CITY HALL, DUNKIRK, NY 14048

WILFRED ROSAS
MAYOR
(716) 366-9882
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MARK WOODS
CITY TREASURER
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RICHARD OLRGG
DEPUTY CITY TREASURER
(716) 366-9861
FAX (716) 363-0058

To: Mayor Wilfred Rosas
From: Mark A. Woods, City Treasurer
Date: December 1, 2020

MAW

I offer some items to consider in respect to the proposed amendments to the 2021 proposed City of Dunkirk budget:

The proposed amendments to the 2021 City of Dunkirk budget result in no financial change to the overall revenues and expenditures. The net result to the bottom line is zero.

However, the internal decreases proposed will adversely affect the daily operation of City government.

The decrease in the law department personnel services line will force a cut in the amount of hours worked by the City Attorney. Ultimately this will mean an increase in the need for outside counsel and thus an increase in costs to City residents.

The elimination of the part-time employees line in the development department will effect the Summer promotions and special events that residents anticipate. Adequate staffing is required for successful events. It is not feasible or rational to rely on volunteers to staff and be held accountable for the outcome of these events.

The reduction of the DLDC allocation will drastically reduce the July 4th fireworks display. This allotment also provides the means for the DLDC to pay the County, School and City Taxes on the property it owns within the City limits. Without the allocation, transfer of ownership must happen in order for the taxes to be paid.

I further disagree with the allocation of \$10,000 for the Common Council budget line item for retained legal counsel. The Charter of the City of Dunkirk provides for a City Attorney. There is no need to budget for an additional source of legal expertise when one is currently available. This is contrary to the Charter of the City of Dunkirk and to those individuals who helped establish the document. I believe this change sets a dangerous precedent and will open the door for other departments within the City government to seek the same allocation for outside legal representation.

Exhibit B

To: Mayor Rosas
From: Marsha Beach, Fiscal Affairs Officer

mb

December 1, 2020

In review of the decision of the City Common Council to present amendments to the 2021 City of Dunkirk Budget, below is a summary of the items I believe will be a detriment to the residents of the City of Dunkirk:

The first item is the reduction of the Law Department Head salary of \$70,000 to \$45,000. The reduction is not providing any form of savings to the taxpayers and jeopardizes the City's security of necessary legal representation and, based on updated information below, postures the City for a certainty of additional, non-budgeted taxpayer costs. The Council's efforts to force the current City Attorney to resign is ill advised and not in the best interest of our diverse population and residents.

Current status by the numbers:

Current Salary of Full Time City Attorney	\$62,000 per year*
Current City Attorney Years of Experience	8+ years*
Additional Benefit of current City Attorney	Bilingual**
Current City Attorney City of Residence	Dunkirk, NY

*Average Salary for City Attorney in NYS (Dunkirk) with 5+ years experience \$81,370 (per Zip Recruiter as of 11/23/2020)

**Average Salary for City Attorney in NYS (Dunkirk), 5+ years experience & Bilingual \$92,695 (per Zip Recruiter as of 11/25/2020)

NOTE: Current City Attorney salary is \$30,000 per year under current average.

Instead of trying to drive away our current attorney, the council should be doing everything they can to keep our bilingual attorney at such a bargain rate of \$62,000 per year.

A part time attorney will certainly force the City to seek outside legal counsel and representation:

Based on City Attorney reduced to part-time due to proposed amendment, and Average Billable hours of 10 hours per week from an outside attorney at the average cost per billable hour of \$268, the City taxpayers can expect to pay out an additional \$139,360 in legal fees in 2021. Again, this proposed change will not save taxpayer dollars, it is going to cost us \$100,000 +.

Secondly, eliminating the part time employees in the development department, will drastically affect our Thursday night on the Pier and other festivals. Mayor, you have already eliminated the Special Events Coordinator position. If the council eliminates the summer help, I don't see how the City can possibly pull off the summer events our residents have come to enjoy.

Lastly, eliminating the DLDC allotment will eliminate our 4th of July celebration, as \$30,000 of the \$45,000 is strictly to pay for the fireworks. I believe our residents look forward to this celebration each year. Eliminating the DLDC allotment will be cancelling the fireworks, as they are not budgeted for anywhere else. This amendment will also force the DLDC board to transfer the City properties back to the City. And of course, those taxes, insurance and maintenance fees are not budgeted for anywhere else.

Exhibit C.



CITY OF DUNKIRK
Department of Planning and Development
City Hall, Dunkirk, New York 14048
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REBECCA WURSTER
Director
716-366-9879
Fax 716-363-6460

4/18/2020

Mayor and Council,

I am writing in regards to the personal services-part time line in the planning development section of the budget. This fund has \$21,000 currently budgeted. I am concerned with completely getting rid of this funding. The Mayor has reduced this by 53% and I feel that is an adequate reflection of the need for the coming year. Obviously, due to Covid-19, it is hard to predict what our festivals and events will look like for the 2021 summer. Yet, I believe that this part time funding goes greater than providing funds to help with these festivals and events. As you know, we have recently invested millions of dollars into our Pier and Waterfront District. This summer will bring additional public investment from our Lake Shore Dr. Complete Streets Project, the added kayak launch, new Adirondack Chairs, large scale games, and a private development project at 23-25 Lake Shore Drive West. With the addition of these new projects and the increase of people coming to our waterfront, I see the need for extra hands around our Pier and waterfront area. I could see the use of these funds going towards someone that looks over our Pier and waterfront, keeps the area clean, helps with the kayak launch, makes sure our landscaping is flourishing, helps with small maintenance task, etc. I do believe that the part-time help is also needed at the festivals and events, but understand that those are still in question for the 2021 season. I would request and recommend that you keep some additional funds for part time help to continue the great momentum and recognition our beautiful waterfront is receiving and make Dunkirk a destination place on not only the weekends but every week day as well.

Most Sincerely,

A handwritten signature in cursive script that reads "Rebecca Wurster".

Rebecca