

PROCLAMATION 18-01
CITY OF MADEIRA, HAMILTON COUNTY, OHIO
MONDAY, APRIL 23, 2018

WHEREAS, over the past two and a half years, the City of Madeira has defended against various litigation actions brought by Mr. Philip Douglas Oppenheimer, at considerable and unwarranted expense to Madeira taxpayers. To date, numerous trial and appellate court judges and administrative bodies have rejected, unanimously, Mr. Oppenheimer's accusations and legal theories.

WHEREAS, Mr. Oppenheimer continues to make accusations of fraud, corruption, and collusion against the City of Madeira's public servants including the City Manager, Tax Commissioner, Clerk of Council, Council Members, and Law Director. This continues to take place despite clear and unequivocal judicial declarations and findings that his accusations are false and without merit.

WHEREAS, Ohio Revised Code § 2323.52 authorizes a city director of law of a municipal corporation who has defended against habitual and persistent "vexatious conduct" in the court of common pleas to commence a civil action against such person to have them declared a "vexatious litigator."


WHEREAS, the statute defines "vexatious conduct" as conduct of a party in a civil action that (i) serves merely to harass or maliciously injure another party to the civil action, (ii) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or (iii) is imposed solely for delay.

NOW, THEREFORE, the undersigned members of Council do hereby proclaim our intention to direct Law Director Brian W. Fox to explore the filing of a civil action, pursuant to Ohio Revised Code § 2323.52, to have Mr. Philip Douglas Oppenheimer declared a vexatious litigator.

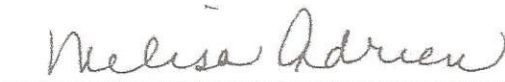
IN WITNESS WHEREOF, I have hereunto issued this Proclamation this 23rd day of April, 2018.



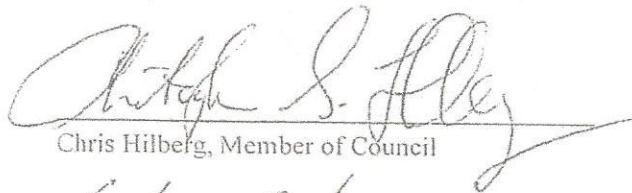
Traci Theis, Mayor



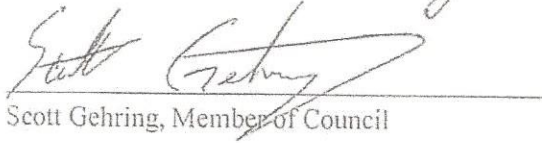
Nancy Spencer, Vice Mayor



Melisa Adrien, Member of Council



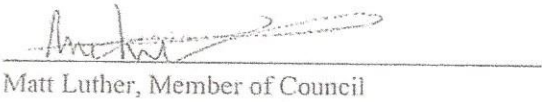
Chris Hilberg, Member of Council



Scott Gehring, Member of Council



Brian Mueller, Member of Council



Matt Luther, Member of Council

S:Council/Proclamations/2018/Proclamation Related to Vexatious Litigator Claim – April 23, 2018

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA,	:	Case No. A-18-02415
	:	
Plaintiff,	:	Judge Shanahan
	:	
v.	:	DEFENDANT’S MOTION TO
	:	DISMISS BASED UPON THE
PHILIP DOUGLAS OPPENHEIMER,	:	FILING OF THE COMPLAINT
	:	WITHOUT LEGAL AUTHORITY
Defendant.	:	----
	:	ORAL ARGUMENT:
	:	July 2, 2019, 11:00 a.m.
	:	

Defendant PHILIP DOUGLAS OPPENHEIMER, by and through undersigned counsel, hereby moves to dismiss the *Complaint* as said *Complaint* was filed without the authorization of the Madeira City Council and, therefore, said filing is *ultra vires*. In support hereof, Mr. OPPENHEIMER tenders the following Memorandum in Support.

MEMORANDUM IN SUPPORT

This action was filed purportedly on behalf of the CITY OF MADEIRA. In Ohio, municipal corporations are bodies politic and corporate and, as such, capable of suing and being sued. R.C. 715.01 (“[e]ach municipal corporation is a body politic and corporate, which...may...sue and be sued”). And “[t]he legislative authority of a municipal corporation is permitted by R.C. 715.03 to exercise and enforce the powers of a municipality.” 1978 Ohio Att’y Gen’l Opin. No. 057, at 2-140.

In fact, R.C. 715.03 provides that “municipal corporations have the general powers mentioned in sections 715.01 to 715.67, inclusive, of the Revised Code, and the legislative authority of such municipal corporations may provide by ordinance or resolution for the exercise

and enforcement of such powers.” Yet, with respect to exercising the power and authority of the CITY OF MADEIRA to sue as contained in R.C. 715.01 (and to do so specifically against Mr. OPPENHEIMER), the only action taken by the Madeira City Council was the passage of Proclamation No. 18-01, a copy of which is attached. Within the Proclamation, the Madeira City Council simply “proclaim[ed] [its] *intention* to direct Law Director Brian W. Fox *to explore* the filing of a civil action, pursuant to Ohio Revised Code § 2323.52, to have Mr. Philip Douglas Oppenheimer declared a vexatious litigator.” (Emphasis added.)

Thus, through Proclamation No. 18-01, the Madeira City Council (i) simply declared its intention; and (ii) that intention was limited to exploring the possibility of filing of a civil action against Mr. OPPENHEIMER. Most notably, though, nothing within Proclamation No. 18-01 granted actual authorization for the filing of this lawsuit, *i.e.*, the specific exercise of the corporate power to sue. Further action by the Madeira City Council was required before this lawsuit could legally be filed.

“As a court speaks only through its journal, a public board, commission or other deliberative body speaks through its minutes or its written record of resolutions, directives, and actions.” *Swafford v. Norwood Bd. of Ed.*, 14 Ohio App.3d 346, 348, 471 N.E.2d 509 (Ohio App. 1st Dist. 1984); *see also State ex rel. Young v. Board of Ed. of Lebanon City School Dist.*, 2013-Ohio-1111 ¶54 (12th Dist.) (“[a] board of education speaks only through its resolutions entered upon the journal of its minutes”); *Grimes v. Cleveland*, 17 Ohio Misc. 193, 195, 243 N.E.2d 777 (Cuyahoga Cty. C.P. 1969).

In this case, as the governing body of the CITY OF MADEIRA, *i.e.*, the Madeira City Council, has not authorized the filing of this lawsuit, the filing thereof is without legal authority, *i.e.*, it is *ultra vires*. As such, counsel for the CITY OF MADEIRA should be directed to identify

the specific basis by which they were purportedly given the authority by the Madeira City Council to file this lawsuit on behalf of the CITY OF MADEIRA when they did so on May 11, 2018. And absent such express and explicit authority having been given, this action should be dismissed as its filing was *ultra vires*.

Respectfully submitted,

/s/ Curt C. Hartman
Curt C. Hartman (0064242)
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
(513) 379-2923

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon counsel for Plaintiff, Brian Fox (bfox@graydon.law) and Steve Goodin (sgoodin@gradon.law), via e-mail on the 16th day of May 2019.

/s/ Curt C. Hartman