

Additional Proposed Legislation for
the
April 13 2021 City Council Meeting -
Filed in the Office of the City Clerk
April 1, 2021

* * Please Note * *

For questions regarding the proposed legislation,
call the City Clerk's Office at 585-428-7421



City of Rochester, NY
Rochester City Council

City Hall Room 301A • 30 Church Street • Rochester, New York 14614-1290

**COMMITTEE OF
THE WHOLE
INTRODUCTORY NO.**

149

Loretta C. Scott, President
Councilmember At-Large

Willie J. Lightfoot, Vice-President
Councilmember At-Large

Malik D. Evans
Councilmember At-Large

Mitch Gruber
Councilmember At-Large

LaShay D. Harris
Councilmember
South District

Mary Lupien
Councilmember
East District

Miguel Meléndez
Councilmember At-Large

Michael A. Patterson
Councilmember
Northeast District

Jose Peo
Councilmember
Northwest District

March 31, 2021

TO THE COUNCIL

Ladies and Gentlemen:

Re: Resolution Urging the
Administration to Terminate
Corporation Counsel

Transmitted herewith for Council approval is a resolution calling for the immediate removal of Corporation Counsel, Tim Curtin.

On September 2, 2020, the public became aware of an incident on March 23, 2020 between the Rochester Police Department and Daniel Prude which resulted in the death of Daniel Prude. On September 12, 2020, the City Council authorized an Independent Investigation of the City's response to the death of Daniel Prude to be conducted by the law firm, Emery Celli Brinckerhoff Abady Ward & Maazel, LLP.

Based upon the findings of the Independent Investigator released March 12, 2021, it is apparent that the Corporation Counsel has, in numerous instances throughout the investigation of the Daniel Prude matter, acted in a manner which displayed a lack of trustworthiness and indicated a lack of proper legal guidance.

While the Council is aware of the month-long disciplinary suspension Corporation Counsel served in the fall as a result of the Managerial Review by Deputy Mayor James Smith, the findings of the Independent Investigator provided additional insight into the actions of the Corporation Counsel that warrant further ramifications.

This is not the first time City Council has expressed concerns about the performance of the Corporation Counsel, and furthermore, it is the belief of the Council that the trust between the Corporation Counsel, the public, and the Council themselves has been irrevocably broken.

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The City Council of Rochester is requesting that the City Administration immediately and expeditiously move forward with the termination of the Corporation Counsel.

Respectfully Submitted,



Loretta C. Scott
President



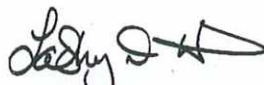
Willie J. Lightfoot
Vice President



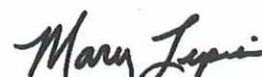
Malik D. Evans
At-Large Member



Mitch Gruber
At-Large Member



LaShay D. Harris
South District



Mary Lupien
East District



Miguel Meléndez
At-Large Member



Michael A. Patterson
Northeast District



Jose Peo
Northwest District

INTRODUCTORY NO.

149

Resolution No.

**RESOLUTION CALLING FOR THE REMOVAL OF CORPORATION
COUNSEL TIM CURTIN**

WHEREAS, on September 2, 2020 the public became aware of an incident on March 23, 2020 between the Rochester Police Department and Daniel Prude resulting in the death of Daniel Prude; and

WHEREAS, it became apparent that individuals with the City of Rochester government had varying levels of knowledge and information between the time of this incident and public disclosure; and

WHEREAS, on September 16, 2020 the Council of the City of Rochester authorized an Independent Investigation of the City of Rochester's Response to the Death of Daniel Prude to be conducted by the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel, LLP; and

WHEREAS, the Special Investigator made specific findings regarding various actions of the Corporation Counsel Tim Curtin; and

WHEREAS, among those findings was a determination that Corporation Counsel Curtin (the chief legal officer of the City) had early knowledge of the incident yet did not notify others of those details or investigate the matter further; that he actively discouraged Mayor Warren from publicly disclosing the incident based upon untruthful statements that the Attorney General had

directed non-disclosure; that the Law Department utilized various means with no proper basis in law to withhold public disclosure of records requested pursuant to the Freedom of Information Law; that Curtin justified withholding of information based upon a fear of public unrest; that, on multiple occasions throughout the time period from the date of death to the date of public disclosure and beyond, he gave legal advice to the Mayor which was not legally sound (including the claim that the OAG investigation precluded public disclosure and that the criminal investigation prevented a move forward in the discipline of officers); and

WHEREAS, this is not the first time that City Council has expressed concerns about the performance of the Corporation Counsel;

WHEREAS, is it imperative that the Corporation Counsel have the trust of the City Council, the public and the members of the legal community including the judiciary; and

WHEREAS, it is the belief of City Council that the trust has been irrevocably broken;

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Rochester as follows:

1-That based upon the report of the Independent Investigator, it is apparent that the Corporation Counsel Timothy Curtin has, in numerous instances throughout the investigation of the Daniel Prude matter, acted in a manner which displayed a lack of trustworthiness and indicated a lack of proper legal guidance.

2-That the Council of the City of Rochester believes that Timothy Curtin can no longer effectively serve in the role of Corporation Counsel to the City of Rochester.

3-That, as the Corporation Counsel is an appointee of the Mayor and serves at the pleasure of the Mayor, the Council of the City of Rochester expresses in the strongest possible terms that the Mayor must immediately take steps to permanently remove Mr. Curtin from the position of Corporation Counsel.

4- That this Resolution shall immediately be delivered to the desk of the Mayor of the City of Rochester.

5-That this Resolution shall take effect immediately.

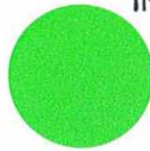


City of Rochester

City Hall Room 308A, 30 Church Street
Rochester, New York 14614-1290
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FINANCE INTRODUCTORY NO.

Lovely A. Warren
Mayor



150

March 31, 2021

LAW 30

TO THE COUNCIL

Ladies and Gentlemen:

Re: Amendatory Agreement With Morrison &
Foerster to provide Outside Conflict Counsel
In Relation to the Independent Investigation
Authorized by Ordinance 2020-283

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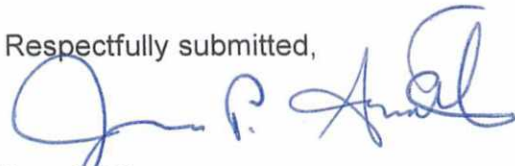
Transmitted herewith for your approval is legislation authorizing a second amendatory agreement with Morrison & Foerster, New York, NY (partner: Carrie Cohen) for provision of conflict counsel in the context of the independent investigation being conducted by Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP ("Emery Celli") pursuant to Ordinance 2020-283 ("Celli Investigation"). The amendment would increase the maximum compensation payable by \$15,000, which will be funded from the 2020-2021 Budget of Undistributed Expenses.

The Celli Investigation focused on the City's communications, processes, and procedures that took place related to the death of Daniel Prude in police custody. Typically, pursuant to Article 9 of the City Charter, the Corporation Counsel attends to all the legal business of the City, and would, through the Law Department, work in concert with Emery, Celli to represent the City and its employees in the context of the independent investigation. Here, however, the Corporation Counsel has determined that a conflict exists due to the fact that the Law Department is defending the City against a lawsuit brought by the Prude Estate, and because of the Corporation Counsel's role under the City Code as FOIL Appeals Officer.

The Law Department, therefore, retained Morrison & Foerster to act as outside conflict counsel in relation to the Celli Investigation. The Law Department's initial PSA with Morrison & Foerster was limited to \$10,000 and engaged the firm for the limited purposes of negotiating with Emery, Celli concerning the scope of the investigation, the procedures to be employed during the investigation, and the manner in which testimony would be taken. The PSA was thereafter amended to incorporate a second phase of representation which included document review and production and representation of witnesses during depositions. To compensate Morrison & Foerster for this additional Phase II work, the fee payable was increased by \$75,000 in October of 2020 by Ord. No. 2020-307.

The Law Department now seeks to amend the PSA a second time, to increase the fee by a final \$15,000 as compensation for a third phase of representation which involved negotiations with Emery Celli related to privilege issues and negotiations concerning the final report of the Celli Investigation and any response thereto.

Respectfully submitted,


Lovely Warren
Mayor

James P. Smith
Deputy Mayor



INTRODUCTORY NO.

Law #30

150

Ordinance No.

Authorizing an amendatory agreement with Morrison & Foerster LLP for outside conflict counsel services relating to the independent investigation authorized by Ordinance No. 2020-283

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an amendatory professional services agreement with Morrison & Foerster LLP to provide legal services as outside conflict counsel with regard to the independent investigation conducted pursuant to Ordinance No. 2020-283 (the Investigation). The amendatory agreement shall amend the existing agreement authorized in Ordinance No. 2020-307 to increase the maximum compensation by \$15,000 to a new total of \$100,000. The amendatory compensation shall be funded from the 2020-21 Budget of Undistributed Expenses.

Section 2. The amendatory agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.



City of Rochester

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FINANCE INTRODUCTORY NO.

157

Lovely A. Warren
Mayor

March 31, 2021

LAW 29

TO THE COUNCIL

Ladies and Gentlemen:

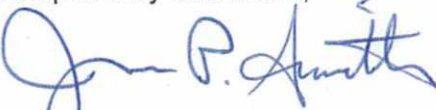
Re: Amendatory Agreement with Nixon Peabody
LLP to provide Outside Conflict Counsel In
Relation to the Independent Investigation
Authorized by Ordinance 2020-283

Transmitted herewith for your approval is legislation authorizing an amendatory agreement with Nixon Peabody, Albany, NY (partner: Tina Sciocchetti) for conflict counsel provided to Council President Scott and Councilmember Lupien in the context of the independent investigation being conducted by Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP ("Emery Celli") pursuant to Ordinance 2020-283 ("Celli Investigation"). The amendment would increase the maximum compensation payable by \$10,000, which will be funded from the 2020-2021 Budget of Undistributed Expenses.

The Celli Investigation focused on the City's communications, processes, and procedures that took place related to the death of Daniel Prude in police custody. Typically, pursuant to Article 9 of the City Charter, the Corporation Counsel attends to all the legal business of the City, and would, through the Law Department, work in concert with Emery, Celli to represent the City and its employees in the context of the independent investigation. Here, however, the Corporation Counsel has determined that a conflict exists due to the fact that the Law Department is defending the City against a lawsuit brought by the Prude Estate, and because of the Corporation Counsel's role under the City Code as FOIL Appeals Officer.

The Law Department, therefore, retained Nixon Peabody to act as outside conflict counsel for President Scott and Councilmember Lupien in relation to the Celli Investigation. The Law Department's initial PSA with Nixon Peabody was limited to \$10,000. Due to an unexpected volume of documents that were subject to legal review during the investigation, Nixon Peabody is seeking additional compensation for the additional work performed. Accordingly, the Law Department seeks to increase the fee payable to Nixon Peabody from \$10,000 to \$20,000.

Respectfully submitted,


for Lovely Warren
Mayor

James P. Smith
Deputy Mayor

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INTRODUCTORY NO.

Law #29

151

Ordinance No.

Authorizing an amendatory agreement with Nixon Peabody LLP for outside conflict counsel services relating to the independent investigation authorized by Ordinance No. 2020-283

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an amendatory professional services agreement with Nixon Peabody LLP to provide legal services as outside conflict counsel with regard to the independent investigation conducted pursuant to Ordinance No. 2020-283 (the Investigation). The amendatory agreement shall amend the existing agreement to increase the maximum compensation by \$10,000 to a new total of \$20,000. The amendatory compensation shall be funded from the 2020-21 Budget of Undistributed Expenses.

Section 2. The amendatory agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.