



COUNTY OF ERIE

OFFICE OF THE COUNTY SOLICITOR

Brenton Davis,
County Executive

William S. Speros,
County Solicitor

MEMORANDUM

Date: March 5, 2024
To: Erie County Administration
From: County Solicitor Bill Speros
RE: Legality of County Council Plan to Rescind Blasco Lease with Gannon University

Erie County Council has no authority under the Home Rule Charter to propose an ordinance to rescind Resolution 36 of 2023, by which Council approved Gannon University's lease of a portion of Blasco library for Project NePTWNE. Rescinding the lease via ordinance in this manner is a violation of law in at least three ways.

First, Council has no power under the Charter to engage in contracting matters on behalf of the County. Nowhere in Council's enumerated powers and duties under Article II, Section 1.C, is there a provision permitting Council to execute or rescind County contracts. The Charter grants this power exclusively to the Executive branch under Article III, Section 5.H. Thus, a Council ordinance purporting to rescind the lease, and thus exerting control over a County contract, is an overreach of Council's powers. Such an ordinance would create the precedent that Council can reconsider and potentially rescind *any* commercial County agreement. This would open the door for every new Council to revisit every commercial lease or services agreement approved by a previous Council, and to use such power to exert undue control over the administration of County contracts. This is a clear violation of the separation of powers set forth in the Charter. Specifically, Article II, Section 2.G.2 expressly prohibits Council from interfering with the daily administration of County government, which is exclusively reserved for the Executive branch.

Second, upon Council's adoption of Resolution 36-2023, the County and Gannon executed the Blasco lease, which became legally and commercially binding on both parties. Rescinding the lease without Gannon's consent is a breach of contract, which exposes the County to legal risk.

Third, Council is attempting to rescind Resolution 36-2023 by passing an ordinance pursuant to Article II, Sections 3.B.2.f and 3.E. These provisions are irrelevant to this matter, as they grant Council the power to amend or repeal a previously enacted ordinance but do not give Council the power to rescind a resolution. It bears repeating that Council approved the Project NePTWNE lease by Resolution 36-2023, not by passing an ordinance. Thus, there is no ordinance that Council has the power to repeal, here. This is precisely the reason why Council demonstrates its approval of County contracts via resolution rather than by ordinance: so that there is no legal basis for Council to rescind – and thus breach -- a multi-year County agreement solely because a newly elected Council has a different political agenda.

Although it would be a clear violation of law, it appears that Council is intent on following through with its proposed ordinance. If it passes, Council must send a copy of the ordinance to the Executive within three days, and the Executive has fourteen (14) days to veto the ordinance. Council then has thirty (30) days to override the veto with a super majority vote. (Home Rule Charter Art. II § 3.D.1.)