

TO: Members of the City Council

FROM: Ann H. Campbell, Mayor

DATE: July 11, 2017

SUBJECT: City Attorney Recruitment

At the June 27 City Council meeting, there was a motion to direct staff to provide a job description and various alternatives for overseeing the position of City Attorney.

Since the retirement of our City Attorney, we are now needing to move forward with the recruitment process. As is usually the case when there is a retirement or resignation in the City, there is an opportunity to reexamine job descriptions and organization. To that end, I have asked city staff to research state and national comparables and implications for the City of Ames.

Below are the results of staff's research:

- 1) Background for City Council hiring and supervising City Attorney
- 2) Background for City Attorney's being hired and supervised by City Manager
- 3) Human Resources recruiting suggestions
- 4) Staff suggestions for supervision of City Attorney's position
- 5) Pertinent current City code sections & proposed changes

Interim City Attorney Mark Lambert prepared the following background report on the generally accepted practice of having the City Attorney report directly to the City Council:

Background for City Council hiring and supervising City Attorney

Having the City Council hire a City Attorney directly is done for reasons of checks and balances to protect the independence of the City Attorney and her/his advice, and ultimately to protect the Council and the City. There could be risk

for the Council if the Attorney is supervised by the Manager, as the part of the City Attorney's job is to protect the City and the Council from actions/policies by city employees that might be unlawful or otherwise put the City at risk. The City Attorney's autonomy allows him/her to make independent recommendations to the Council.

The City Attorney's job is to advise the City Council, City Manager, and the City departments on legal matters. A risk of placing the City Attorney under the direct supervision of the City Manager is that the independence of the City Attorney may be compromised. Just as a hypothetical example, if a City department was seeking an ordinance that the City Attorney's office thought was unlawful in some way, there is risk that the City Manager could override the City Attorney's advice and proceed with the ordinance, and the City Attorney might feel unable to advise the Council otherwise.

Virtually all City Attorneys in large cities in Iowa are hired and supervised directly by their respective Councils. A quick survey of 14 larger cities in Iowa showed that in all but two cases the Council directly hires and supervises the City Attorney.

- Cities where City Council directly hires/supervises the City Attorney: Des Moines, Cedar Rapids, Sioux City, Iowa City, Waterloo, Council Bluffs, West Des Moines, Dubuque, Urbandale, Marion, Bettendorf, and Ankeny (which apparently contracts out city attorney services).

- In the City of Davenport, the Council hires the City Attorney on the recommendation of the City Administrator. It appears that the City Attorney reports to the Council, but is required to keep "the city administrator fully advised of the work being performed by the legal department." The Davenport "corporate counsel," as it is called, has charge of all legal services auxiliary to council action and makes quarterly reports to the city administrator and council. Removal may only be accomplished with a recommendation by the administrator with 2/3 approval by Council. Compensation is fixed by the administrator subject to Council approval.

- In 2016, the City of Cedar Falls determined that the City was best served by having a full-time City Attorney (as it had in the past) and the existing City Code already in effect had the city administrator supervise the legal department.

At other governmental levels in Iowa, there is separation between the management and the attorney. On the county level in Iowa, county attorneys are elected, and do not answer to the Board of Supervisors or the county

manager/administrator. On the state level, the Attorney General is elected, and does not answer to the Legislature or the Governor.

City Councils hiring City Attorneys is the norm nationwide. One source found online was a paper prepared by an attorney in California, "The City Attorney/City Manager Survival Guide" by Michael Jenkins. It states in the introductory paragraph: "Most city councils appoint a city attorney, approximately 2% are elected. In a general law city, the city manager and the city attorney are typically the only city officials directly appointed by the city council and are the highest ranking city employees."

The City Manager's office prepared the following summary of an alternative supervisory approach:

Background for City Attorney being hired and supervised by City Manager

Another supervisory approach would be for the City Attorney to operate under the direction of the City Manager, as is the case for nearly all other City department heads. (The two exceptions are the Library Director and the Transit Director, who each report to a separate board.) As with all other departments within the organization, under this arrangement the City Manager would have responsibility for ensuring that high quality legal services are provided, for seeing that all of the Council's adopted policies and processes are followed, and for assuring that all employees in the City Attorney's Office are subject to the same policies and procedures as those in the other departments.

Since the City Manager is a full-time position, she/he is in a better position to judge the performance of the City Attorney on a daily basis from within the organization rather than rely on periodic observations of part-time board members from outside of the organization. Since the major customers of the City Attorney's Office are the City departments, a case can be made that the City Manager is better positioned to make sure the City Attorney and her/his staff is responsive to the requests for legal assistance from the various City departments.

Human Resources recruiting suggestions

Attached is a memo from Human Resources Director Kaila Kenjar addressing the recruitment of a new City Attorney. She has also included a proposed job description and a draft recruitment plan. Kaila will be present on Tuesday evening to help us refine these two documents. Staff is also collecting data on salaries paid to city attorneys in other, comparably sized Iowa communities in case we want to set a salary range or cap on Tuesday evening.

On the other hand, should Council choose to move supervision of this position to the City Manager, no additional direction regarding the job description or recruitment will be needed. The City's established processes would be utilized to accomplish approve a job description, carry out the recruitment and determine an appropriate salary range.

Staff suggestions for supervision of City Attorney's position

Should Council decide to retain supervision of this position, staff thought it was important to offer the following suggestions for how Council oversight might be most effective:

- Hold more frequent meetings between the City Attorney and Council members or representatives of the Council. The frequency could range from weekly to quarterly.
- The Mayor and select Council members could hold regular, joint meetings with the City Manager and City Attorney.
- The City Attorney could file periodic reports to the Council.
- The Council could direct that periodic surveys be conducted to gather customer input regarding services provided by the City Attorney. This could provide Council with valuable information that for identifying and correcting any potential issues.
- The City Council could include in the City Attorney's annual evaluation a set of specific criteria that would assure quality legal service to the other departments and assure that the City Attorney's Office is treated the same as other departments in the City.

Pertinent current City Code sections & proposed changes

Sections of the City Code dealing with the City Attorney are shown on the next page. Whichever supervisory model is chosen by Council, the City Manager has recommended that Section 2.48 of the Code be modified to clearly state that the City Attorney and the Legal Department operate under the City Council's established policies, processes and procedures. This would include financial management (budget preparation, purchasing, etc.), human resource management (personnel policies and procedures, job classification, recruitment, salary determination, performance appraisal process, Civil Service, hiring, etc.), I/T policies, etc.

Sec. 2.11. OTHER MATTERS PERTAINING TO THE MAYOR AND MAYOR PRO TEM.

(1) The mayor is the chief executive officer of the city and presiding officer of the council. Except for the supervisory duties which have been delegated by ordinance to the city manager, the mayor shall supervise all city officers and departments.

**DIVISION IV
CITY ATTORNEY**

Sec. 2.47. COUNCIL TO APPOINT CITY ATTORNEY.

City Attorney may be appointed by vote of a majority of the whole number of the city council and shall serve at the pleasure of the city council, and be subject to removal by a vote the same as required for appointment.

[State Law Ref. Iowa Code Sec. 372.13(4)]

Sec. 2.48. POWERS AND DUTIES.

The city attorney shall be head of the legal department of the city and supervise such assistants as may be appointed. The city attorney, and assistants when so directed by the city attorney, shall have the following powers and duties:

(1) Opinions. The city attorney shall give, when requested by the city council, administrative agency, city manager or department head, legal opinion upon all questions of law arising out of any ordinances, suits, claims, or demands for or against the city, and shall give such opinion in writing unless otherwise so requested, which said opinion shall be filed and preserved among the records of the city clerk.

(2) Legal adviser. Act as legal adviser to all city officials, boards and commissions as far as their or its official duties are concerned, when requested to do so by said officials, boards and commissions.

(3) Ordinances. Report to the city council any defects that may be discovered in any ordinance, and shall draw such ordinances as may be requested by the city council.

(4) Contracts and litigation. When directed to do so by any city official, board or commission, draw all contracts between the city and other parties, prosecute and defend all suits or other matters in which the city shall be a party, take appeals in such cases as the interest of the city requires, and prosecute or defend the city's interest in all the courts of the state and of the United States, all subject, however, to the direction of the city council; provided however, that the city attorney is authorized and directed hereby to prepare, sign and file proper informations when there is evidence that a person may be guilty of a violation of a city ordinance, and to prosecute any and all such informations to judgment and on appeal.

(5) Sign legal papers. Sign the name of the city to bonds and papers of whatever kind necessary in legal

proceedings for the prosecution of any suit in court when directed to do so by the city council.

(6) Deliver effects of office to successor. Transmit to a successor a docket of all cases pending wherein the city is a part, as well as all books, papers and documents in the possession of the City Attorney belonging to the city.
(Ord. No. 2508, Sec. 2, 5-20-75, Ord. No. 3633, 10-23-01).

To: Mayor and City Council Members
From: Kaila Kenjar, Human Resources Director
Date: July 7, 2017
Subject: City Attorney Job Description and Recruitment Plan

Assuming the City Council chooses to have the City Attorney report to the City Council, this memo outlines the items that should be discussed for the purpose of finalizing the job description and recruitment plan. If the Council decides not to have the City Attorney report to the City Council, this memo will be disregarded and the City Manager will direct the recruitment and selection process.

Staff has made several key changes to the job description for Council's review and discussion. The City Attorney job description has been updated from what was provided to Council and City Attorney candidates during the 2012 recruitment. These job description changes include:

- The individuals to whom the City Attorney will be responsive
- A statement outlining the requirements of this position to follow various City policies and procedures
- Modifications to the education and experience requirements.

Additionally, Council may want to further discuss whether it is satisfied with the minimum qualifications and determine the necessity of the residency requirement for this position. It should be noted that implementing a residency requirement may limit the pool of potential candidates.

Upon conclusion of Council's review and discussion of the job description, staff is requesting approval to finalize the job description.

Staff has also provided the Council with a draft recruitment plan. This document serves to provide an overview of the recruitment/hiring process and various components that

comprise the process. Council may want to discuss the use of a recruiting firm and the impact on the time frame/posting length; the draft time frame; and any components of the plan.

Upon conclusion of Council's review and discussion of the draft recruitment plan, staff is requesting approval to finalize the City Attorney Recruitment Plan and subsequently begin the recruitment/hiring process.

Another point of discussion is whether or not the City Council wants to set a salary range or a maximum salary, which would help ensure potential candidates' salary expectations are aligned with what the City Council is willing to entertain. Staff will provide more details at or prior to the Council Meeting on July 11, 2017.

Attachments:

Updated Job Description

Draft Recruitment Plan

DEFINITION: The City Attorney provides legal advice and services to the Mayor, City Council, the City Manager, City Staff, Boards and Commission, and, when available, to Mary Greeley Medical Center in matters related to operations, services, and activities of the municipality; drafts city ordinances, resolutions and other legislative documentation; reviews policies and procedures for compliance with legal requirements.

JOB FUNCTIONS:

Examples of Essential Job Functions: Under the direction of the Mayor and City Council, acts as legal advisor and counsel for the City of Ames and all officers of the city, including all boards and commissions as applicable; conducts legal research; advises city officials and staff concerning legality of operations, policies, procedures, and activities. Drafts ordinances, resolutions, and other documents for review and action by the Mayor and City Council; drafts other legal documents for City Staff and Mary Greeley Medical Center. Prepares opinions about questions of law regarding the interest of the City. Represents the City in general litigation matters; prosecutes and defends all suits and actions to be brought and pending in any court in the State of Iowa or United States; attends administrative hearings and other meetings to represent the City's position. Prepares and presents staff reports and other necessary correspondence. Follows City adopted policies and administrative processes including, but not limited to personnel policies; purchasing policies; pay and classification systems; Civil Service practices and policies; and performance management, hiring, and budget processes. Under the direction of the City Manager's Office, assists in preparing and administering the annual budget for City's Legal Department. Supervises legal professional and support staff, and leads staff in implementing department and city-wide goals and objectives. Attends City Council meetings and provides legal advice and opinion.

Other Job Functions: Conducts special projects and research assigned by the Mayor, City Council, or the City Manager. With approval of the City Council, may conduct special projects and research for Mary Greeley Medical Center and Boards and Commissions. May monitor the performance of legal work by outside counsel and assist outside counsel where appropriate. Performs related duties and responsibilities as required.

EXCELLENCE THROUGH PEOPLE:

Each employee is expected to continually strive to bring shared values to life through our Excellence Through People organizational culture. ETP values include: committing to continuous improvement, inspiring creativity and innovation, being customer driven, making data-driven decisions, championing employee involvement, striving for excellence, having fiscal stewardship, acting with honesty and integrity, exhibiting leadership, choosing a positive attitude, respecting one another, promoting safety and wellness, and cultivating teamwork. For leaders, this includes creating a work culture that brings these values to life. For all employees, this includes maintaining a Total City Perspective. The purpose of ETP is to deliver exceptional services to the public at the best price, and for employees to experience an enjoyable and stimulating work environment.

EQUIPMENT:

Examples of Equipment Used on the Job: Operates assigned equipment.

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:

General Physical Characteristics: The work involves sitting 85 percent of the time; standing and walking 15 percent of the time; frequently lifting objects under 10 pounds; infrequently lifting objects from 10 to 25 pounds; and infrequently lifting objects from 25 to 50 pounds

Vision Requirements: The minimum standard for use with those whose work deals largely with preparing and analyzing data and figures, accounting, transcription, computer terminal, extensive reading, visual inspection involving small defects or parts, use of measurement devices, or assembly of parts at distances close to the eyes.

Required Physical Activities: Climbing, stooping, kneeling, crouching, reaching, standing, walking, lifting, finger dexterity, grasping, talking, and hearing.

Environmental Conditions: The work is performed inside and occasionally outside and occasionally includes being exposed to noise and/or vibration.

EMPLOYMENT STANDARDS:

Education and Experience: Graduation from an educational institution accredited by a DOE recognized accreditation body with a Juris Doctorate degree and admission to Iowa Bar to practice in Iowa state courts, as well as federal courts is required. Five years' experience in general legal practice with exposure to municipal or government law required. Experience in legal practice including litigation and negotiation, real estate, commercial and contract law is required.

Preferred Experience: Minimum of three years of experience in a management/supervisory capacity.

Must pass a credit and background check.

Knowledge, Skills, and Abilities: Knowledge of modern and complex principles and practices of criminal, constitutional, municipal, human resources, labor relations, and contract law; methods and techniques of legal research; courtroom procedures; principles of legal and business letter writing and report preparation; English usage, spelling, grammar and punctuation; pertinent Federal, State, and local laws, codes and regulations. Ability to organize, interpret and apply legal principles and knowledge of legal problems; present statements of law and fact clearly and logically; prepare clear and concise legal position papers; conduct research on legal problems and prepare sound legal opinions; gain cooperation through discussion and persuasion; properly interpret and make decisions in accordance with laws, regulations and policies; communicate concisely and clearly both orally and in writing; establish and maintain effective working relationships with those contacted in course of work; make sound decisions and use good judgment, determine the appropriate approach to use for

lawsuits, and demonstration of intellectual capabilities. Ability to plan and supervise the work of a professional staff. Ability to understand and follow oral and/or written policies, procedures, and instructions.

**CITY OF AMES DRAFT RECRUITMENT PLAN – CITY ATTORNEY
7/11/17**

POSITION DETAILS

Position Title: City Attorney	Class Number: 9366
Department: Legal	Open/Promo/Existing: Open
Civil Service: No	Bargaining Unit: N/A
Posting Period: July 14, 2017 – August 7, 2017 Will be posted as open until filled with first review of applications on August 7 th .	Account Number:

ADVERTISING

Postings: NEOGOV

All regular City Postings
Affirmative Action Mailing List

Special: IMLO

The Iowa Lawyer (website and print publication)
American Bar Association website
Iowa Bar Association website
Iowa League of Cities Cityscape (print publication)
Drake and University of Iowa Placement Offices
Recruiting Firms – OPTIONAL*

TARGET TIMEFRAMES **

Advertising/Accepting Applications	July 14th - August 7th
Complete Hiring Assessment Job Standard	Week of July 17th
Minimum Qualifications Review	Week of August 7th
Select & Schedule Phone Interview Candidates	Week of August 14th
Phone Interviews	Week of August 21st
Select & Schedule On-site Candidates	Week of August 28th
Collect Candidate PI Results	Week of August 28th
Review Hiring Assessment Results with Council	Week of August 28th
On-site Interviews	Week of September 5th – September 15th
Reference Checks	Week of September 18th
Offer Extended	Week of September 18th
Target Start Date	Middle of October

*Use of a recruiting firm will generate candidates, but will result in a longer posting period to allow for the firm to source. Steps after qualifications review will be delayed. There will also be additional cost.

**Targeted timeframes are subject to change based on number of candidates, scheduling, and other needs.

1. PRE-INTERVIEW PROCESS

HR will pre-screen applications for minimum qualifications.

HR will work with the City Council to establish the use of an online hiring assessment tool.

2. PRE-INTERVIEW AND PHONE INTERVIEW SELECTION PROCESS

A subcommittee comprised of the Mayor, two City Council members, the City Manager, and the HR Director will review candidate applications and supplemental questionnaire responses. The most qualified candidates (5-10) will be invited to participate in a phone interview with the subcommittee.

Following the phone interviews, approximately 3-4 candidates will be invited for an on-site interview and will be asked to complete the hiring assessment tool.

The HR Director will administer the hiring assessment tool and interpret the candidate's results for the entire City Council.

3. ONSITE INTERVIEW PROCESS

On-site interview components for each candidate could include:

Day 1

- Overview with candidate of the scheduled components of the on-site interview process, and completion of a written statement from the candidates regarding whether they would like their application/candidacy evaluated in closed session.
- Breakfast meeting with three current City Council members.
- Oral Board Interview with staff (Chuck Cychosz, Shawn Bayouth, Diane Voss, Kelly Diekmann) and outside stakeholder (local attorney recommended by Story County Attorney Association)
- Lunch meeting with City department heads
- Meeting with Legal Department staff.
- Late afternoon public presentation with Q&A for local attorneys, judges, MGMC administrators, commission members, press members, and other citizens who want to attend.
- Evening closed session oral interview with all current City Council members*.

Day 2

- Community tour conducted by Brian Phillips.
- Wrap up with candidates including benefits overview, background check authorization, and final questions (Bob Kindred or Kaila Kenjar).
- Lunch meeting with Mayor, the three City Council members who did not attend the breakfast, and Steve Schainker.

4. POST INTERVIEW AND SELECTION

Following onsite interviews, HR will complete references, credit checks, and background checks on all the finalists.

In a closed session, Council members will review the reference information, discuss the candidates, rank (or score) the finalists and subsequently provide direction to the City Manager regarding which candidate to negotiate with. Steve Schainker will then be empowered by the City Council to negotiate with the preferred candidate.

After the negotiation, the City Council will then approve a resolution to hire the new City Attorney.

5. POST OFFER

Physical