

**INVER GROVE HEIGHTS SPECIAL CITY COUNCIL MEETING
TUESDAY, DECEMBER 22, 2020 - 8150 BARBARA AVENUE**

****Hybrid In-Person or Zoom Virtual Meeting****

A. Call to Order and Roll Call:

The City Council of Inver Grove Heights met in a Special Session on Tuesday, December 22, 2020, in the City Council Chambers. The Pledge of Allegiance was recited. Mayor Tourville called the meeting to order at 6:00 p.m.

Present In-Person were: Council Members Piekarski Krech, Dietrich, and Perry; Environmental Specialist Ally Sutherland, Attorney Korine Land, LeVander, Gillen, & Miller Law Firm.

Present Via Phone or Zoom: Councilmember Bartholomew; City Administrator Joe Lynch.

Korine Land, Shareholder with LeVander, Gillen, & Miller Law Firm introduced herself stating she has been with the Firm for almost 25 years. She practices in the area of Municipal Law and personally represents the Cities of West St. Paul, Cottage Grove, Stillwater, Hampton, and Randolph, and helps out when she can. She commented City Attorney Bridget McCauley Nason is on a vacation that was planned prior to the scheduling of this Special Meeting.

Attorney Land discussed ground rules stating when a Special Meeting is called, the Agenda must strictly be adhered to. It cannot be changed, added to, or altered. This is a public meeting, not a public hearing. The public is not entitled to comment on any discussions of the Council. The Council can hear from the City Administrator. She stated since this meeting is a Special Meeting through the Interactive Television Section of the Statute, any votes taken must be done by roll.

1. Consideration of Existing and Future Employment of City Administrator; potential action related to existing and future employment of City Administrator.

Attorney Land stated the City Administrator requested Council to consider parting ways in an amicable, mutually agreeable Resolution through a Separation Agreement. If Council is interested in pursuing, there are several options. The City Administrator has suggested a Separation Agreement. All options include the payment of Personal Leave and in some cases, Vacation Leave. Options:

- A. Terminate the Agreement Pursuant to the Employment Agreement. By giving two months' notice and paying four months of severance.
 - Pros: Transition time into the New Year.
 - Cons: There is no release of claims. Cutting off the Agreement Pursuant to the Contract. Would not be entering into a Separation Agreement.
- B. Terminate the Employment Agreement with no notice. Just pay the six months' salary.
 - Pros: Gives finality. Relationship is done.
 - Cons: No release of claims. No transition time.
- C. Enter into a Separation Agreement. This is not going pursuant to the Contract. It is negotiating the separation. Anything the City Administrator requests would be on the table. Anything the Council wants to offer that differs, is on the table.

Pros: Offering a release of claims. The City Administrator is asking the City to do the same. A mutual release of claims.

Cons: Required to offer more incentives than offered under Options A and B. Those are Contractual. In a Contract you have to have mutual consideration. Each party has to give up something in exchange. The benefits would be greater than what is entitled under the Contract.

Attorney Land asked the Council if they wanted to enter into a Separation Agreement. If yes, follow up work would need to be done as follows:

- Include what terms and conditions, and what that looks like.
- What the Council is willing to agree to in a Separation Agreement.
- Need to authorize by Motion that her office negotiate with his Attorney or with him and prepare a Separation Agreement.
- The Separation Agreement would need to be approved at a subsequent meeting. If this needs to be a Special Meeting, a date will need to be set.

If deciding not to enter into a Separation Agreement:

- Could still consider parting ways. Look at the Contract and decide Options A or B.
- Decide to do nothing. Not willing to enter into a Separation Agreement and not ready to terminate but continue on with the existing relationship.

Attorney Land suggested Council discuss the pros and cons of Options A, B, and C with direction in the form of a Motion.

Councilmember Bartholomew stated Options A and B have no mention of accrued personal leave or accrued vacation leave be paid. Attorney Land responded Options A and B would be paying accrued vacation and personal leave.

Councilmember Dietrich stated she was unsure how things got to this point. She commented the City Administrator just had a favorable review at "Meets Standards", and at the last Council meeting was approved for an increase. She asked why things are at this juncture. Attorney Land responded last week the City Administrator's Attorney contacted her office and asked to consider a mutual parting of ways. The only way to address that was through the Council. The Mayor was notified because he can call a Meeting if he chooses and the Mayor felt it was appropriate.

Mayor Tourville stated he was unsure on Options A, B, C, or a D. He asked if Council was willing to discuss a separation or not and do it by Motion to see if it gets a simple majority. If deciding on a separation, Council would need to discuss scenarios.

Councilmember Bartholomew stated it was his opinion if the City Administrator is requesting a Separation Agreement, he would be in favor of exploring one. He commented he was hesitant on some of the requests.

Motion by Bartholomew second by Piekarski Krech to entertain the idea of a Separation Agreement.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville stated Options A and B are specified by the Contract. A Separation Agreement that adds the release of claims on both sides would be the possibility of Option C, or a D.

City Administrator Joe Lynch thanked the Council for having the meeting and for entertaining the purpose of the meeting. He responded about the question asked by Councilmember Dietrich stating with the year they have had in 2020 with COVID, the pandemic, other items and issues, a change next year with a new Mayor and Council, the Parks and Recreation Director leaving, and the retirement announcement of the Public Works Director, he felt it would be an opportunity for the new City Council to start with a City Administrator they would be working with on a longer-term basis.

He stated he suggested a Separation Agreement because there is important business to be conducted such as the replacement of both Director level positions, ongoing negotiations for land for park development, a park design process has started, and have engaged in conversations with the YMCA about some items at the Community Center. He stated he felt this was an opportunity to stay on and help through those. He offered it be a 90-day timeframe. He is required to give 60 days by Contract. He stated he would also help serve as a resource and sounding board about what the Council may do to start the process for a new City Administrator. He stated he is not asking for a lot over and above his Contract. He is owed his personal leave and vacation. There is a policy requirement that 240 hours of leave time go into a Health Savings Account (HSA), he would like consideration that not be a requirement. He would like to be paid out all of his personal leave and vacation time directly and not have it go into an HSA. He stated he has money in the HSA from working over 14 years with the City and feels it is strong enough to help with family medical insurance.

City Administrator Lynch requested after the 90-day period; the City give him the six-month severance in the Contract. This will help with ongoing expenses as he seeks re-employment. He asked for consideration of a monetary value to help with health insurance costs for his family for the remainder of 2021. He is currently Single Plus One at a cost of \$19,000 a year. He stated the City has to offer him COBRA if they are able to reach this agreement and would like consideration of that. He stated the last request is the release of claims and to part amicably. He commented he cannot file a claim against the City and the City cannot file a claim against him after a certain point and time. He stated he does not believe this to be extraordinary. He is trying to cover expenses as he seeks re-employment. He does not know what he will do, does not have a job in hand.

Councilmember Piekarski Krech stated the request is very reasonable considering Separation Agreements negotiated with other City Administrators in the past. She commented she found past City Administrator's paperwork, and this is less than what was negotiated with them. This allows for the transition to a different Administration using the current Administrators professional knowledge of things that need to be done and makes sure of some carryover with losing two major Department heads.

Councilmember Perry stated she does not feel the request is too out of the box based on other indicators seen. The transition period would be helpful due to the length of time both Director's leaving have been with the City. There is a lot of knowledge and experience leaving with them. She commented a transition period would be a good thing.

Attorney Land requested clarification on a request by the City Administrator's Attorney about an indemnification clause that says if he is personally sued for any events related to his employment while here, the City will indemnify him; meaning cover the costs. She stated that is an important factor given the history of things that have gone on. She stated that is a consideration that needs to be taken into account. She asked the City Administrator to confirm that is something he requires. City Administrator Lynch responded yes; he would like the Council to consider.

Councilmember Dietrich stated we are all responsible for our own actions. For example, if she were speeding to get to the meeting and gets a ticket, that is a choice she made, and someone else would need to pay for. She stated earlier in the year when there was a Data Breach Investigation, she had to retain her own Attorney, she would then charge the City for that because she was found innocent. She commented the request seems extremely unreasonable to her. City Administrator Lynch responded his position was that he was acting within the realm and responsibility of the City Administrator position while working for over 14 years. He asks for consideration that if he is sued individually in that capacity, the City indemnify him. It is reasonable and is done frequently. Councilmember Dietrich stated there have been a lot of bumps in the road and does not believe this can be compared to an average City Manager or Administrator situation with the number of times the City has been in the paper to their detriment.

Mayor Tourville stated like Councilmember Piekarski Krech, he has been on the Council with two City Administrators. If deciding to have no separation, and get filed on, they would contact the Insurance Company, League of Minnesota Cities Trust, and the coverage would be there. The City may want that coverage, so the City is covered too. He stated it is not an unreasonable request, the Council needs to decide whether to honor it or not. He commented he believes the release of claims is normal.

Mayor Tourville asked Attorney Land if these are normal requests that happen within City Administrators/Managers with Separation Agreements. Attorney Land responded there are some unusual conditions in this request:

1. To have ongoing employment for a period of time. Once severing the relationship, it can make it awkward. She stated given the circumstances it seems to make sense, in reality, it can be awkward.
2. An indemnification clause like this would have to be covered by the City because its contractual the League would not defend. That would be out of pocket City costs. She stated for example, if the City Administrator is sued and found liable, then he is saying we require him to pay his own costs. If the Courts find that whatever he did was wrong, the City will not indemnify him for that. If he is found not-labile, then for the indemnification of his defense, he would expect the City to cover those costs, because he did not do anything wrong and was solely sued out of his job as the City Administrator. She stated that makes sense from his perspective, it would not be covered by Insurance, the City would be required to pay it.

Councilmember Piekarski Krech stated if the City were included, or as an adjunct, Insurance would cover the Cities part. The City would cover it if the City Administrator were still employed. Attorney Land responded yes on both parts. Councilmember Dietrich questioned the practicality of having the City Administrator work for 60 days or the additional 30 he is requesting. She asked what kind of protection Staff would have because of the numerous allegations that have plagued the City. She requested seeing boundaries in writing about this. Attorney Land responded that would be difficult to put in writing and was not sure it could be. She commented it would be a strained relationship with Staff with everyone knowing it would be over. It is a reality that it makes it an uncomfortable situation for everyone.

Councilmember Perry asked if something could be put in that is worded "Council deems it is not working, and more unhelpful than helpful", then it could be separated early and all terms be met so he would be paid for the remainder of the 60 to 90 days and still have everything else. Attorney Land responded that could be a counteroffer. Early termination if it is not working out type language would be very appropriate.

Councilmember Dietrich requested having a senior Staff member be the person making decisions, hiring, or firing. She stated she would not be comfortable having the City Administrator be solely in charge. Mayor Tourville agreed it was a good suggestion and stated it could be done.

Councilmember Piekarski Krech stated previous Administrators did not leave immediately. What was different in those two situations was that there was an Assistant City Administrator on Staff, there is not anyone on Staff currently who could take over the role. There are Department heads, but those may be busy running Departments and would be stretched and stressed to have to take over for the City Administrator for any length of time.

Mayor Tourville stated in looking at Agreements done through the League, no hiring, firing, or discipline is allowed without supervision or the overseeing of the Council through that period. He suggested the wording be looked into such as no hiring, firing, or discipline is done without approval by the Council. If someone does something bad, it would have to come before the Council.

Councilmember Bartholomew stated it would have also been his suggestion about the hiring and firing. The Council would have the final say on any hiring or firing. The City Administrator, in the interim period, would be advisory and directional. If something were to come up the decision would be made by the Council.

He stated he wanted further discussion about the 60 or 90 days. He asked if language could be crafted stating if during the 60 to 90 days things become intolerable and cannot get along, the City has the option to terminate and deduct the remainder of that time from the figure of time entered into the Agreement. He stated he wanted to make sure the City does not get in the position where they have 90 days no matter what the behavior of an individual is. He wanted to make sure the City and taxpayers are protected. If something goes badly or the Administrator is not performing like they wish him to, they could terminate and reduce the six or four months remaining. He stated he would like further discussion from the Council and the Attorney on this.

Attorney Land clarified what Councilmember Bartholomew stated saying he would like to see an immediate termination of the in-service, and then six months starts from there. He would not get the full benefit of 60 or 90 days of working. If they decide the relationship is not working and want to terminate, at that point they would start the six-month severance and his working days would be done and paid out in six months. Councilmember Bartholomew agreed with the wording.

Mayor Tourville wanted information about the medical portion of the request. Attorney Land responded the cash payout is unusual. She has seen an extension of health benefits. She stated the Council could do a cash payout in lieu of continuing health, continue on health benefits, or not consider it at all. Mayor Tourville stated if 90 days go by and there is still some assistance needed and the Council determines they would like to go another 30 days, the option is available. He stated they should give the normal medical while the person is still employed instead of a cash out.

Mayor Tourville listed the scenarios:

- What they would do if things go bad
- What if things are going well and say they want to continue the relationship longer, another 30 days, or on a month-to-month basis and then re-evaluate.

He stated he does not believe the City Administrator is asking to be a part of interviewing or filling vacancies, he is just here to help. City Administrator Lynch responded a discussion should be had about what the Council would want to do as there seems to be some overlap. For structural consideration, seeking direction on keeping it the same, or changing it. If changing, what would they change it to, and what does it mean in terms of the type of candidate to look for. He stated he would assist in those conversations and take direction from the Council, start the process, and at the end the Council makes the hiring decisions. The City Administrator just makes recommendations.

Councilmember Bartholomew stated he was uncomfortable with the lump sum. He was leaning toward coverage to the Administrator while employed. At the end of employment, he is eligible for COBRA. He suggested determining a better number for participation in COBRA and not the \$19,000. He stated they are being more than reasonable if keeping the coverage as is for the 60/90-day period, and possibly some type of assistance with COBRA.

Councilmember Bartholomew asked the City Administrator for more information about the structural component. Councilmember Piekarski Krech responded awhile back there were discussions about how some positions could be rolled together and have a different structure that did not have a Department head for each Department but have Supervisors and Managers.

City Administrator Lynch stated he was willing to drop the consideration for the cash payment. Continue to split insurance as they do now, would have to have COBRA after the 90 days, he would carry that cost himself. He responded about the structure stating there are opportunities due to possible overlap. For example, there is Park Maintenance, Street Maintenance, and Utility Maintenance. Street and Utility are part of Public Works. He stated there is a City Engineer, Assistant City Engineer, and Staff Engineer. A lot of Engineering comes from Community Development. There have been challenges with the process of getting all Engineering documents as part of the overview

and oversight of development. He asked if there was a way to streamline Engineering in another Department and combine the maintenance aspects of Streets and Utilities with Parks and create a structure that is one less Department head, but a different Supervision or Management structure. Future discussion about this is needed. Councilmember Bartholomew stated this has been discussed before. City Administrator Lynch responded that was correct, it has not gone further. Mayor Tourville stated if the new Council wants to discuss the new structure they could.

Councilmember Dietrich stated with the Mayor weighing in and new Council coming in, the City Administrator staying on needs to be addressed. Looking back at the cultural assessments done, Coaches in place, Consultants to try to fix the existing current culture, and now adding this; as someone who is outgoing, she was uncertain how productive that was going to be. Someone that knows they are going to be leaving and the issues they already have with the culture. She would like to see an option discussed that ways are parted sooner rather than later.

Councilmember Dietrich stated the League of Minnesota Cities can appoint Interim Administrators. She commented there are other options that have not been discussed. She stated she is not going to assume what City leadership wants unless she hears it out of their mouths. Other things need to be explored and she does not want to be reactive.

Attorney Land requested more clarification on the following:

- The number of days. If it is up to 30, 60, or 90 days.
- Council may want to be able to terminate early, or if all goes well, extend longer. A timeframe is needed.
- Indemnification. Whether the Council is comfortable with the understanding that no one knows what will happen in the future. The City is accepting some responsibility if the City Administrator is sued individually and found not liable, then the City is on the hook for the defense.

She stated Council seemed fine with the mutual release of claims and six months being the severance amount.

Councilmember Dietrich stated definitely no indemnification. Councilmember Bartholomew asked if the indemnification only kicks in if the City Administrator is sued and prevails, the City pays the Legal fees. If sued and the City Administrator does not win, there is no indemnification to the City. Attorney Land does not recommend it be a blanket indemnification regardless of the outcome of the litigation. It needs to be solely if he is not found liable and does not have to pay any consequences from that lawsuit. Councilmember Bartholomew stated he could support an indemnification like that. He felt it was fairly standard. Mayor Tourville stated if written that way he would support. He stated if innocent the City would look into support, if guilty, he is on his own. Attorney Land responded this is for Civil Litigation.

Councilmember Perry asked if there was a timeline for indemnification, for example, five years and then say he is on his own. Attorney Land responded there could be. There is a Statute of Limitations that automatically applies to litigation. She was unsure of the timeline as it depends on what the allegation is. It would solely be out of a claim that arose because of his employment. Councilmember Piekarski

Krech stated that was reasonable. She would agree to 90 days knowing how long it takes to try to put people in, knowing the number of legal issues, and what the City has to do in order to be compliant with all State regulations and COVID. She stated the League of Minnesota Cities does not appoint anyone; they give references. She commented that Mr. Lynch has been very good with making sure all laws, regulations, and rules are followed. She would like to make sure that continues.

Councilmember Bartholomew stated he has no problem with 60 or 90 days but wanted to make sure there is an out in case things are not working well. If the new Council determines the City Administrator has done well in 60 days, they could go to 90 days. If there is not a will for it, they exercise the escape.

Mayor Tourville clarified stating it would be 60 days and add the other 30 to make it 90, but if things do not work out it can be terminated and go to the natural process of six months.

Councilmember Perry stated they need to discuss the personal leave request to be paid out to a lump sum versus into an HSA. Attorney Land responded it is common to get cash payment. City Administrator Lynch responded he has a total of approximately 690 hours between personal leave and vacation because he has been here over 14 years. Per policy, 240 hours of personal leave is put into the HSA. He asks the City to waive that and pay him at the end of the 60- or 90-day period, all of the time, times his computed hourly rate, paid out in cash.

Mayor Tourville asked what they do with other employees. City Administrator Lynch responded they are agreeing to separate, doing that is different than an employee that leaves. He stated he is different in that he is the sole employee of the City Council by Contract. They may be able to do that without endangering precedent for others. Attorney Land responded it is not unusual to get cash payout instead of requiring it go into the HSA. When entering into a Separation Agreement, it is a Contract, as long as there is mutual consideration on both sides, it is valid.

Attorney Land stated they may have covered all points. It will be a matter of wordsmithing the balance of the release of claims and words in the Contract. She suggested the Council get that into a Motion to be clear what the parameters are. Mayor Tourville asked that a Draft be put out to the entire Council. Attorney Land responded she was not comfortable with sending out a Draft of the document. She is given direction to prepare it.

Attorney Land highlighted the bullet points for the Council's Motion as follows:

- Allow the City Administrator to work for 60 days with an option for the City Council to extend an additional 30 days, up to a maximum of 90 days of working. Or terminable at any time at the Council's discretion.
- Whatever the last day of work is, there would be the payout of the severance payment, which is six months, as well as vacation and sick leave payout.
- During the period of time he is working, there would be no hiring or firing, disciplinary authority, or major departmental changes.
- Mutual release of claims.

Attorney Land was unsure what the Council wanted to do about indemnification. If agreeing with the indemnification, it would be solely if he is sued by a third party because of his employment, while with the City of Inver Grove Heights. The City would defend or pay for his defense, only if, there would be reimbursement, he would have to be found not liable. Councilmember Bartholomew agreed.

Councilmember Dietrich stated were he to stay the 60 or 90 days, the City will need to interview and open up the process for some Department heads to be filled. She asked what the language around that would be. Attorney Land responded she was unsure of how involved the City Administrator usually is in the process. The HR Manager handles the interview process or sets things up. She stated she assumes his role is making sure the department is still operating. Councilmember Dietrich stated she wanted to see in black and white what the Statute is, so she knows what it is going to look like, or the job descriptions about hiring. Attorney Land responded the City Administrator indicated he does not hire or fire, he does recommendations. If not wanting him involved in making recommendations, that language could be done. It could be stated the Council does not want him involved in those major decision-making processes.

Mayor Tourville suggested Council set the direction on how involved they want the City Administrator to be, or none. Councilmember Dietrich stated that would be something the new Council needs to weigh in on. Attorney Land stated the City Administrator cannot make any hiring, firing, or disciplinary action without consideration by the Council. Councilmember Dietrich stated she was unsure what role everyone plays, be it HR and the team put together, but would like clarification.

City Administrator Lynch stated for example, when the Finance Director was hired, they had Committees. The Committees were made up of some Finance Staff, Department heads, an Audit Firm Representative, and the Financial Consultant had a Representative. They met with candidates they considered "semi-finalists". Those were ranked and given to the City Administrator and Human Relations Director. The HR Director sets up the schedule for interviews, the rooms for interviews, and communicates with the Applicants. If there is follow up, the HR Manager communicates with the Applicant. Finalists are then brought back and the HR Manager and City Administrator, interview between one and four people. There is a ranking of the Candidates from the Committee's, the HR Manager, and himself, and a Candidate is brought forth to the City Council they feel best fits the City and the role they are hiring for.

City Administrator Lynch stated it was his understanding that whatever is determined by Council, Attorney Land would be in contact with his Attorney with the document. He commented when it was stated she was not comfortable with a Draft; it is still in flux while he and his Attorney get a chance to look at it. Attorney Land agreed stating she would negotiate it with his Attorney and bring a Draft both are comfortable with as well as the mutual release language which is the key legal language the Council needs to see.

Mayor Tourville asked the Council if all bullet points were covered. He commented about hiring and suggested the City Council in 2021 would have to be more involved than they have in the past around Department heads. They may have to decide to look at hiring an Administrator sooner or later or get an Agency to help. This would be similar to the process used when hiring the Police Chief.

Councilmember Bartholomew agreed. He stated the City Council could say they are fine with the City Administrator and Human Resource Manager picking finalists but request one more Representative for a panel of three. It could be a pick from the Council, be it a Council Member or another Department head. This would be something the new Council would consider. Councilmember Dietrich stated there is conflict between the HR Manager and the City Administrator. Expecting those two to work together and have a fluid relationship, she does not see that working. She stated there needs to be a different plan in place. Councilmember Bartholomew agreed. The purview of the new Council at that time can make the decision of having two or three people, if acceptable to all. Councilmember Dietrich stated the HR Manager is afraid to work with the City Administrator right now, that is a valid concern. Councilmember Bartholomew responded he understood and agrees it is a valid concern. Councilmember Dietrich stated it if is not in writing it could be a problem. Councilmember Bartholomew suggested proposing something.

Councilmember Dietrich proposed a Senior Staff Member and HR. Councilmember Bartholomew asked if there would be no input from the City Administrator, other than at the preliminary selection. Councilmember Dietrich responded as long as there are three people in the room, she would be comfortable. Councilmember Bartholomew responded he would be fine with that and asked the City Administrator how he felt about it. City Administrator Lynch responded it was fine.

Mayor Tourville asked the City Administrator if all points have been covered. City Administrator Lynch responded the points laid out are within reasonable expectation. It is a matter of looking at the complete document and having his Attorney review and consult with him on it.

Mayor Tourville stated if there is a Motion and it passes, a document will stay as a Draft and be submitted to the City Administrator and his Attorney to look at. He stated a date needs to be picked. He commented Attorney Land stated the 29th worked better for her and asked if that date works for everyone. All Councilmember's agreed on the date. Mayor Tourville suggested meeting at 6:00 p.m.

Motion by Piekarski Krech second by Bartholomew to look over the bullet points provided by Attorney Land, put together a Draft to send to the City Administrator and his Attorney, and meet on Tuesday, December 29th.

Ayes: 5

Nays: 0 Motion carried.

B. ADJOURN:

Motion by Piekarski Krech second by Perry to adjourn the Special Session at 7:09 p.m.

Ayes: 5

Nays: 0 Motion carried.