

CITY COUNCIL WORK SESSION

Cedar Falls Council Chambers

December 21, 2020

The City Council held a special work session at City Hall via teleconference at 5:00 p.m. on December 21, 2020, with the following persons in attendance: Mayor Robert M. Green, Frank Darrah, Susan deBuhr, Kelly Dunn, Simon Harding, Daryl Kruse, Mark Miller, and Dave Sires. Staff members attended from all City Departments.

Mayor Green introduced the first item on the agenda, discussion of proposed ordinance changes for the Mayor and City Administrator duties and responsibilities.

Mayor introduced City Attorney Kevin Rogers.

Attorney Rogers stated that review of certain code ordinances regarding clarification of the duties of the Mayor and the City Administrator. Changes will clarify the Mayor as the Chief Executive Officer and the City Administrator as the Chief Administrative Officer; eliminate duplication and inconsistencies to ensure duties are clearly identified. The duties required by the Code of Iowa to be retained by the Mayor will be and duties that are administrative will shift to the City Administrator position, although not many were shifted. Most were clarified: for example, things that are purely administrative such as cemetery permits and some nuisance things were shifted from the Mayor. Attorney Rogers stated a review of other positions in the organizational chart, starting with Department Directors and Managers in terms of appointments and removals. One aspect is the idea of City Officers and certain positions are held by City Officers, such as appointments to Boards and Commissions, there for a term of years; some are designated. In terms of personnel, some of our ordinance provisions were not clear as to which positions are held by City Officers and which are not. Several are identified such as City Attorney, City Administrator, and City Clerk; some are not very clear. Some of the trappings [of being a City Officer] are taking an oath or posting a bond; some are identified as a City Officer but do not require taking an oath or posting a bond. A decision was made to clarify as City Officers those which are specifically called out in the Code of Ordinances. Department Directors are identified as City Officers. Appointment authority was reviewed as well as removal authority. In the current Code of Ordinances, Department Directors are appointed by Council upon recommendation; under proposed changes appointment would be by the City Administrator. Attorney Rogers states that Mayor Green agrees with these proposed changes, and that there will be a separate conversation regarding part-time/full-time Mayor and salary. Staff recommends updating the ordinance change for clarification of job duties. Attorney Rogers states that the Iowa Code of Ordinances gives Council the authority to designate offices, terms, and duties. Proposal of Ordinance amendments is: Council appoints City Administrator on recommendation of Mayor; City Administrator appoints the four Department Directors; Department Directors appoint employees in their respective departments. This creates a classic pyramid organization to clarify who the appointing and removing authority is for each position. Attorney Rogers asked for questions.

Mayor stated as a presiding officer he encourages Councilmembers to engage in conversation, but ask questions of Mayor as needed. Goal is to give Council and citizens education about what these changes entail. Mayor read a statement explaining discrepancies in the City Code which stem from the creation of the City Administrator position in 2015. The proposed amendments ensure the Mayor is focused on executive duties rather than administrative tasks. The change eliminates duplication of duties and clarifies lines of authority. These changes will reflect actual practice and set clear expectations of Mayor and City Administrator. The current City Ordinance improperly gives both the Administrator and Mayor some of the same responsibilities. The current code also states that the Mayor directly supervises the departments, but then code states the City Administrator directly supervises the departments. Mayor proposes changing the ordinance to directly supervise the City Administrator and the Administrator supervises the departments. Mayor agrees with the pyramid arrangement. Mayor opposes any effort to take away the Mayor's executive powers by reassigning them to the City Administrator. The City's legislative and executive authorities must ultimately remain with the elected officials, not appointed officials or city employees. These amendments provide proper distinction between the Chief Executive Officer and the Chief Administrative Officer while preserving and asserting the Mayor's executive powers. Mayor asks the Council to come to a consensus to move forward with these necessary changes. Mayor opened the meeting for discussion.

Councilmember Harding stated he agrees with clarifying the duties, but has concerns about taking out Council approval on director appointments; also, what's the definition of just cause and who determines just cause in a legal sense. Councilmember Miller agrees with Councilmember Harding on the director appointments; also, is there another layer that Council approves the appointment. Attorney Rogers stated it's lawful for Council to appoint director and this change was for direct accountability due to the City Administrator having direct supervisory function and that person would be in the best position to recruit, appoint and work with that person and therefore has appointing/removal authority. The law presumes the appointing authority and also has removal authority. Just cause is any reasonable basis for removal, a higher standard and has to be a rational reason. The personnel policies will dictate if someone has violations of the personnel policies and constitute as removal. Mayor asked in the case of the City Administrator who would be the determiner of just cause, is that the Council. Attorney Rogers stated under the proposed change the City Administrator would have peremptory authority to remove for cause and that person who is subject to removal would have a hearing (name clearing hearing) to challenge that removal. Initially the decision would be the City Administrator's; the accountability there is if the Mayor isn't happy with how the City Administrator handles those types of disciplinary matters then the City Administrator would answer to the Mayor and ultimately City Council. Mayor clarified in proposing this we are keeping the Administrator on track and if we have a problem with a director we should be addressing that with the Administrator. If the Administrator isn't taking action then that would be just cause for removal of the Administrator. Mayor stated he needs to make sure the City Administrator's job is being done and done properly and less about if the people are doing the job. If the job's not being done properly, then you deal with the people. Mayor stated by law we have to do a different process for police chief and fire chief, same as the recent police chief

appointment was done. Mayor recommends police/fire chief to Council then Council appoints. Attorney Rogers stated police chief and fire chief are dictated by Code of Iowa as is a City Clerk position (3 exceptions). Councilmember Miller asked in terms of just cause how that relates to the City Administrator. Attorney Rogers stated that would be another change: right now it's specifically stated without cause by a majority of Council and that was changed to just cause as well. Attorney Rogers stated it was changed due to the fact that everyone that the City Administrator is supervising is under a just cause standard, therefore the person supervising them should be under the same removal standard. Councilmember Harding referred to the statement that said with just cause and recommendation of the Mayor. Councilmember Harding stated what if Council wants to remove the City Administrator, but Mayor doesn't recommend removal of the City Administrator. Mayor stated there have been questions about the Mayor losing executive authority. Councilmember deBuhr asked about the Mayor being beholden to the Council. Attorney Rogers stated that legally the position of Mayor and Councilmembers are elected positions they have their own standards for accountability and removal. Accountability in all elected officials is with the voters ultimately, removal standard is quite different in that statutory and ordinance. If Council is unhappy about the Mayor's actions, the remedy ultimately is removal; otherwise the elected position of Mayor is a separate elected entity and that's why in the Code of Iowa and Code of Ordinances this executive authority is stated as such. The Mayor still remains the Chief Executive Officer, but Council remains the ultimate authority in terms of running the departments in the city and that's in the ordinances. Councilmember deBuhr referenced page 9. Mayor Green posed the question of if the Mayor should not be involved in the police and fire chief process. Councilmember deBuhr stated those are directed by state code. Mayor stated should the Mayor's recommendation be removed and allowing it be the Council only. Councilmember deBuhr stated that's what it said before the change was made. Mayor Green agreed that's what it said before the proposed change. Mayor Green stated if there's no consensus to move forward that portion can be stricken. Councilmember Harding asked if Mayor has to recommend the removal of police chief as well. Attorney Rogers stated the removal currently for officers is under section 2-159 on pages 4-5 and identifies the Mayor and Council as the appointing authority for positions appointed by Council (Police Chief, Fire Chief, City Clerk, and City Administrator). City Administrator Gaines stated from a practical standpoint regarding the police and fire chief, if they were being investigated remember they are under chapter 80F in the Code of Iowa and there would be an investigation from the Public Safety Director who will recommend to the City Administrator who would bring information to Mayor and Council. This is due to the supervisory aspect, since Mayor and Council don't oversee daily supervision of that police or fire chief and will not be conducting annual evaluations. Councilmember Dunn is uncomfortable with just cause portion and it opens up legal problems. Citizens would like power to remain with Mayor and Councilmember Dunn agrees with the citizens. Councilmember Dunn stated appointing authority and removal needs to stay with Council. Attorney Rogers clarified that the ordinance currently states (2-159a, Page 4-5) for purposes of this section the term "appointing authority" means the Mayor and the City Council; a "determination decision or vote" of the appointing authority as described in this section shall mean a determination decision or vote made upon the recommendation of the Mayor with

approval of the City Council. This is what the ordinance currently states and that's what would remain. Councilmember Sires stated the Mayor should remain with all his powers and remain as full-time Mayor. Councilmember Sires would like to return to before we had City Administrator. The citizens are entrusted in us and voted for us; the more power we keep as a Council and Mayor is the most important part of government. The power needs to stay with the voting citizens. Councilmember Miller stated Mr. McAlister was previously doing the functions of a City Administrator and it made sense to move to the module. The power needs to stay with the voting officials, whether that's Mayor or Council. Mayor Green stated the Mayor's roll is purposeful, but there are limits. Councilmember Miller stated the Mayor's roll is to influence and we are clarifying on the books what happens every day. Councilmember Miller would like Councilmembers to remain sitting in on director's interviews. Mayor Green believes we have no objections on keeping that same process and removed the item. Mayor would like discussion on duties, responsibilities and the budget of the Mayor as described on page 7. Mayor asked Councilmembers if there's an expectation of the Mayor attending all department/staff meetings, this has not happened previously with prior Mayors. Councilmember deBuhr and Sires agreed the Mayor should be attending these meetings. Councilmember Sires also supports sub-committees. Councilmember Miller understands why these meeting have been not opened up to Councilmembers due to social media receiving information pertaining to department meetings. Councilmember Darrah agreed these changes are just clarifying the practice we have been performing and believes going to these directors meetings are inappropriate. Councilmember deBuhr stated she expects the Mayor to go to these directors meetings. Councilmember Darrah clarified with City Administrator Gaines that Mayors have not gone to these directors meetings in the past and City Administrator Gaines stated previous Mayors did not attend. Mayor Green stated he reviews the departmental monthly reports in detail to make sure he knows what's happening in each department and is very engaged. Mayor Green stated the City Administrators job is attending these department meetings. Councilmember Harding agreed on clarifying this document. We need to make sure the people still have the power and make sure citizens understand what the Mayor does. Councilmember Darrah agrees with Councilmember Harding. Councilmember Kruse agrees with clarifying the document and agrees with Councilmember Sires on attending the directors meetings; Councilmembers should be able to choose to go and shouldn't be banned. Councilmember Kruse would like to have outside legal review of the documents/pyramid and have citizens review and gain their feedback. Attorney Rogers questioned what legal aspects are being questioned, but it can be sent for outside review. Councilmember Kruse stated we are changing the pyramid and it should be reviewed by a second opinion. Attorney Rogers stated that there's the policy part that council is in charge of, and the legal part which I'm in charge of. The Council establishes its offices and terms, so ultimately it's Council's decision how the pyramid is set up or how it's not set up and who it appoints. Councilmember Harding suggested reviewing other city's structures instead of another law firm. Mayor Green will remove just cause so it's not under consideration. Attorney Rogers stated just cause is in the ordinance presently. Councilmember Kruse stated he wants citizens to review documents. Attorney Rogers can pull together ordinances from other cities that have a Mayor and City Administrator. Councilmember deBuhr objects to a part-

time Mayor (2-186) and 2-222 regarding appointments-ordinance vs. policy: does the policy need to be changed to reflect the team concept (council interviews directors). Mayor Green stated it will be removed. Councilmember Miller stated that there's a validity to clarifying Councilmembers interviewing directors. Councilmember deBuhr asked if it's in policy, does it need to be in the ordinance; she wants it to remain the same as it is done presently. Councilmember Harding agreed with Councilmember deBuhr on keeping this process. Mayor Green would like to place this into the ordinance. Councilmember deBuhr questioned the salary of Mayor. Attorney Rogers stated this is included in the second part of the agenda, but these are easy changes to make if Council doesn't wish to go in that direction. Councilmember Dunn stated citizens envision Mayor is attending all meetings and working with staff. Mayor Green clarified he doesn't work with the City Administrator; he's his boss and evaluates, supervises, and meets with him regularly to discuss city topics and Mayor's concerns. Councilmember Dunn stated that our public needs to be educated as to the role of the Mayor. Councilmember Sires reiterated the importance of sub-committees. Councilmember Kruse encourages ride-alongs with Public Works and Public Safety. Councilmember Darrah stated he would observe department meetings, but we need to leave the decisions to professionals that the city hires. Councilmember Harding recommended going over the document section by section. Councilmember Kruse stated this would be micromanaging and would like citizens to review all information and get their feedback after a couple months. Councilmember Harding agreed with having the citizens' review. Councilmember Harding asked about the Council moving forward and working together. Mayor Green stated an additional work session is in order. Attorney Roger and Mayor will make suggested changes and it can be distributed to the Council and public. Councilmember Harding supports another draft. Councilmember Kruse suggested a February meeting. Councilmember Dunn doesn't want to rush and wants citizens' suggestions. Councilmember deBuhr agrees with February date. Councilmember deBuhr suggested rewriting back in #7 (page 8) the Mayor's goal is to have written or oral reports to Councilmembers. Mayor Green agreed to re-add #7, but it won't take the place of the departmental monthly report. Councilmember Harding posed the question of taking out part-time Mayor. Mayor Green agreed to taking out part-time Mayor at this time, but it will be discussed at a later date.

There being no further discussion, Mayor Green adjourned the meeting at 6:22 p.m.

Minutes by Kim Kerr, Administrative Supervisor