



CITY OF RAPID CITY

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MEMORANDUM

FROM: Mayor Sam Kooiker *Sam Kooiker*
TO: Legal and Finance Committee
DATE: Wednesday, May 28, 2014
SUBJECT: Department Director Contracts

I am writing in support of entering into employment contracts with the City's eleven department directors. The benefits for the community in having contracts for the eleven Department Directors are significant. The City needs to do everything within reason to retain high quality professionals to assist the elected officials with the day to day operations of the City. While competitive salaries are one component necessary to achieve this goal, we also need to be flexible and look at other means to create an environment to attract the best candidates. Although there has been disagreement about the method of changing the length of the terms of office for Mayor and Council, most people recognize the reality that two year terms, especially for Mayor, are a cause for concern for our department directors and potential job candidates who can be replaced by a new Mayor without just cause. We also recognize the unique nature of these director positions which are not as insulated from politics and political whim as other jobs within the City.

In order to promote stability, the City previously adopted a policy providing severance for department directors who are terminated without just cause. This policy is currently contained in the City's Non-Union Employee Handbook and is regrettably tied to the Short Term Disability plan. I believe that employment contracts which do not significantly alter the current terms of employment for our department directors would be a better business practice and be a more effective way to achieve the goal behind the current policy than tying severance to the Short Term Disability plan, which is intended to cover absence from work due to disability. Employment contracts are also a means to obtain additional protections for the taxpayers and reduce liability. In order to facilitate this process, I authorized former City Attorney Tamara Pier be retained to help draft the contracts and provide guidance. This was done to minimize potential conflicts with the current City Attorney being asked to draft a contract he would also be asked to sign.

Although similar to the current severance plan, there are significant differences.

1. The severance plan in the proposed contracts is no longer tied to the Short Term Disability Plan. The contracts include a probationary period for the first 6 months of employment where only a reduced severance of 3 months would be paid. After the probationary period, the severance would be 6 months. Severance is only payable if the department director is terminated without just cause and is not payable if the department director voluntarily leaves employment or is fired for just cause.

2. If there is any disagreement regarding the severance for a department director under the proposed contracts, the determination of whether there is "just cause" for termination will be made by the courts rather than by the City Council. The City Council is not well equipped to provide an evidentiary hearing when a termination is disputed and it puts the members of the City Council in an unfair position. A hearing in front of the Council is also inherently political. The courts are a more appropriate forum for these types of disputes. It is a benefit to both the City and the department directors that any disputes are decided by an impartial judge rather than by the current process.

3. Before the City will pay severance compensation to an outgoing department head, s/he will be required to sign a release and waiver of any and all claims that they may have against the City. This important protection for the taxpayers is not included in the current policy.

Keep in mind this will not change how Directors are appointed, and it will not change the fact that they are at will employees. It is better government practice to have individual written contracts for these key positions, whereby their leadership roles, responsibilities and compensation packages are clarified.

Employment contracts are a way to recognize these are high stress, high responsibility jobs and to provide a reasonable measure of stability for individuals willing to do them. Similar contracts will be provided for board appointed directors (Airport, Civic Center and Library). The Rapid City Public Library Board has already approved a similar agreement for our new Library Director, James McShane.

Ultimately, these proposed contracts benefit the City with improved recruitment and retention of Department Directors, while maintaining accountability to elected leaders and to our community.