

★ **Roll Call Number**

**Agenda Item Number**

59D

February 11, 2013

**Date**

Recommendation from the City Council Employee Evaluation Sub-Committee regarding Jeff Lester, City Attorney.

Moved by \_\_\_\_\_ to approve the recommendation as contained in the Sub-Committee's letter.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



Rauh, Diane &lt;dirauh@dmgov.org&gt;

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**RE: City DM Council Personnel Committee**

1 message

**Coleman Family** <colemanseven@mchsi.com>

Fri, Feb 8, 2013 at 4:33 PM

To: "Rauh, Diane I." &lt;DIRauh@dmgov.org&gt;

Cc: Chris Coleman &lt;ccoleman@dm.bbb.org&gt;, mahafb@aedairy.com, CColeman@dmgov.org, fcownie@dmgov.org, hensley.chrissteve@gmail.com, brianjmeyerward4@gmail.com, skipmoore@dmgov.org, Brian Meyer &lt;brianjmeyer@gmail.com&gt;, "Griess, Halley" &lt;hrgriess@dmgov.org&gt;, Rick Clark &lt;racndm@me.com&gt;, "Lester, Jeffrey D." &lt;JDLester@dmgov.org&gt;, Coleman Family &lt;colemanseven@mchsi.com&gt;

**DIANE: PLEASE INCLUDE WITH ONLINE AGENDA FOR MONDAY! THANKS.**

Hi all....

A quick update on the City's Personnel Committee (Mahaffey, Hensley, Coleman, and the mayor as Ex-officio). We have had a very engaging process. Lots of paper, research, surveys of comps, and detailed meets with our direct reports. Here are some things I want you to hear from the committee because I intend to submit these items so they are published in our agenda heading into the weekend. At Monday's meeting, I will also have a narrative letter, the materials we used in reviewing the employees and a list of goals for each of the employees for 2013.

Important summary items (more details to come):

- The review with Rick, Diane and Jeff are complete and we have a consensus recommendation. It follows. The components listed below are limited to these three employees.
- First, the Council subcommittee take significant pride in our employees. All have tremendous work ethic, high stature among their peers, community recognition as real leaders, significant competency in all aspects of their responsibilities. Equally important is the integrity and character demonstrate and model to the entire organization and to the city they lead. Diane has been a steady and durable leader and trusted ally of the whole Council. Jeff has engaged in meaningful and positive ways from the very start of his tenure with the city. We feel confident about all he offers the Council and city. Rick Clark's style and tenure has made him one of the top business or civic leaders in the community. There can be no arguing the outcomes of the city's work...national honors every month, high financial rating, high morale among employees, tax levy lower than it was a decade ago, budget solutions that allow the rest to happen. Rick's leadership continues to be a huge reason the city has achieved such high outcomes.
- The review for Rudy Simms is being delayed. Rudy was on vacation when we identified the timeline and we are making a concerted effort to engage the Human Rights Commission in the review process. Rudy's review will come back to us on a future Council agenda. He is aware and supports the timeframe that enables Commissioners to engage. All aspects of his review and compensation will be acted on at a later date.
- The last time our direct reports have had a compensation change was 1/1/11. We are obligated to consider changes effective 1/1/12 and 1/1/13.
- Currently the salaries are as follows:

- o Rick: \$204,617
- o Diane: \$102,778
  - Jeff: \$159,649
  
- It is important to note that in 2009 and 2010 there was not change to their annual salary. They had 3.0% to 3.5% increase effective 1.1.11, which averages less than 1% a year between 2008 and 2011, with no other increases since then.
- It is our recommendation that we award a 2% increase in salary retroactive to 1.1.12. Further, we recommend a 2% one-time payment for the employees effective 1.1.13. This has been a strategy used by the city in the past for some employee groups that provide a one time income adjustment, but does not change the base for future or for retirement benefits. (FYI, this compares to SPM increases that were less than this proposal).
- Vacation. The Council Committee continues to be distressed by the amount of Vacation time in each bank. Therefore, the Council is authorizing and encouraging the cash out of up to 4 weeks of vacation. Further, the Committee recommends a new threshold be established that no bank of vacation hours can exceed 500 hours (down from 600). We strongly encourage the City Manager to implement similar vacation policies for employees and bargaining units. Rick is grandfathered by virtue of his initial employment agreement. Council Committee recommends that Rick uses the balance between his annual accrual and the amount cashed out (160 hours per year). This means that Rick is required to use at least 80 hours of vacation.
- Retirement. The City will increase by 5% the match to each employee's 401A plan. Council directs the City's Human Resources department to make the necessary plan amendments.
- Cell and Data Plan. The employees will be granted a \$100 per month reimbursement for cell and data plan with the stipulation that they are available to Council and city leaders as necessary. This is no increase for some and an increase for others. They will now all be \$100.
- Health Insurance. The employees will be required to increase their health insurance co-pay of premium costs from 10% to 15%. They will be required to increase their co-pay of dental insurance premiums from 0% to 15%. The Council Committee will continue to push for all employees and employee groups to share a greater burden of the cost for this valuable employee benefit. We are requiring, as in the past, our direct reports to lead by example.
- Wellness. The Council supports the efforts being made by many employees. The city has a wellness assessment and guidelines program. Our direct reports can earn a 2.5% reduction on health care/dental care (down to 12.5%) if they participate and verify as non-smokers.

Two additional issues:

- Rick Clark Retention. The Council is enormously proud and happy with Rick's performance. Every city employee and each of our direct reports has made a positive impact on the city, but Rick Clark's imprint is vast and the Council committee believes is lasting and durable. The Council has previously established a retention bonus for Rick Clark which is earned, but paid out upon retirement. In 2012 it was increased by \$2,500 per year to \$12,500. We recommend it continue, but increase by just \$1,000 in each of the next three years with the final payment to be earned on 6.30.2015, or on the date previously set in subsequent years.
- Jeff Lester Retention. We are establishing a Retention Bonus program for Jeff. Over the next five years, each July 1st, the City will allocate \$2,000 to this fund. The fund will grow, but Jeff will only be entitled to the assets of the account (\$10,000) when he leaves the city AND if he stays through the final payment. The payments will be made July 1, 2013 through July 1, 2017. The Council, at their future discretion may change or lengthen the plan, but they can not take away the first \$10,000 if Jeff stays

though 6.30.2017.

Whew.....The four of us on the sub committee have agreed to this set of changes. We will also have a series of reports for you. I really want your reaction, as it is our sincere hope that we speak with one voice (unanimously) in recognizing the valuable contribution these three employees are making to the organization, to the city, and to our future.

Mid afternoon I will submit this for the agenda.

Chris Coleman

# **Memorandum**

February 11, 2013

To: Des Moines City Council  
Citizens of Des Moines

From: City of Des Moines Personnel Committee (Coleman, Hensley, Mahaffey)  
Mayor Cownie

Subject: Jeff Lester Review and Evaluation

## **Section 1: Summary:**

The Council Personnel Committee has concluded its review and evaluation of Jeff Lester, City Attorney. It is our recommendation that the Council acknowledge the tremendous positive impact Mr. Lester contributed in his first two years with the city.

Mr. Lester's review included a scoring sheet specifically designed for City Attorney's on 0-5 scale. The Committee has scored Mr. Lester 4.5 or higher in 31 of the 37 areas; and not less than a 4.0 in any element. This is just one piece of evidence that supports the Committee's complete support for and appreciation of the work of Mr. Lester. The Committee issues the highest level of praise for his work as our City Attorney. In fact, the Committee identified several areas in which we had scored Mr. Lester higher than himself.

This is not a surprise to the Committee Members, who watch Mr. Lester's strong work ethic and commitment to excellence. Not only does it demonstrate his tireless dedication to high quality service to the city and representation of the city; it also illustrates how happy he is in this job. And the Council appreciates and recognizes his positive attitude, accessibility and trustworthiness.

The Committee rated Mr. Lester at the highest level and appreciates his service and leadership. It is our hope and desire (and the compensation recommendations below support it) that Mr. Lester's leadership extends well into the future.

## **Section 2: Compensation Changes Summary:**

It is with gratitude and appreciation that we recommend a 2% pay increase effective 1.1.2012 and a one-time payment equal to 2% of his salary effective 1.1.2013. This can be paid at a schedule and time acceptable to Mr. Lester and the Human Resources Director.

We encourage his use of vacation, including buying out up to four weeks from his bank.

As an illustration of our desire that Mr. Lester continue at a level of high achievement and commitment to the city, we establish a "retention bonus" that will accrue at a level of \$2,000 per year for five years. It will only be paid out if he reaches June 30, 2017, the conclusion of year 5.

Further, we are increasing his deferred compensation / retirement program contribution by 5%.

We are increasing – to 15% - to copay level from the direct reports to the City Council for health and dental insurance. We are supporting the city’s wellness goals by reducing this amount by 2.5% if our direct reports participate in the city’s wellness program and a non-smokers.

Details are found in the memo provided to Council on Friday, February 8<sup>th</sup>, 2013 and is attached to this agenda item.

### **Section 3: Review of past goals and accomplishments**

#### **Legal Department Efficiencies**

- Reduced Number of Staff Attorneys for FY 2013 and beyond
- Continued “Quarterly Accomplishment Program” for Legal Department to monitor performance
- Began using new Evaluation Tools for Deputies and assistants to better evaluate performance
- Continued bi-weekly meetings with Deputy City Attorneys to monitor performance, enhance communications and improve Department metrics
- Investigated complaints concerning Legal Department staff

#### **Litigation & Negotiation**

- Major litigation and defense work related to:
  - Kragnes*
  - Dautovic*
  - Sivi* (Ingersoll Trees)
  - Team Two* (and the concomitant appeal),
  - Neely* (boat fatality) and voluminous other cases.
- Litigation in numerous other ZBA cases
- Dozens of liquor hearings held before Iowa ABD; several revocations and suspensions issued or affirmed
- Multiple tobacco cases prepared & tried/settled
- Provided advice to Zoning Board of Adjustment and City staff on nearly 185 ZBA actions
- Closed several hundred claims against the City
- Obtained dismissals in multiple cases to terminate litigation
- More than 200 Equity and Civil Infraction cases filed
- More than 100 cases closed by Trial, Default or Consent Decree
- Approximately 1100 bench trials set, prepare & negotiated
- More than 140 Bench Trials conducted with conviction rate exceeding 95%
- Additional pretrial conferences, briefs & appeals prepared in numerous cases

#### **Economic Development/ Urban Renewal**

- Provided substantial support on numerous Economic Development/Urban Renewal Projects, including preparation of Preliminary Agreements, Development Agreements, Administration and Review
- Multiple Large Development Agreements Drafted/Reviewed
- Approved Multiple Enterprise Zone benefit requests

- Multiple large leases Drafted/Reviewed
- Negotiated, reviewed and revised multiple banking and finance agreements (10+)
- Administered tax abatement program

### **City Council/City Legislative**

- Drafted numerous legal opinions for City
- Drafted numerous zoning/rezoning ordinances
- Drafted More than 55 Council/Board Communications
- Preparation of Council review of ZBA action in several cases
- Rewrite City Liquor Code several times; numerous related moratoria prepared
- Drafted numerous other provisions related to:
  - Chapter 10-Liquor                      --Chapter 42-Nuisances                      --Chapter 18-Animals
  - Chapter 114-Parking                      --Chapter 134-Zoning
- Worked and reworked possible solutions for "Taxpayer Quality Assurance Subcommittee" of the City Council

### **Community Development**

- Met regularly with CD Director to improve communication between Departments and established Quarterly Update Meetings to ensure nuisance work progresses
- Implemented checklist for Permit and Development to ensure notice and proper items have been completed before referral to Legal
- Assisted in creating constitutional nuisance notice process with minimal service interruptions, costs or delays.
- Created monthly meeting with Litigation Deputy/Assistant City Attorney to monitor Code Compliance Efforts
- Petitions filed in nearly 250 code compliance cases
- Numerous Building Code enforcement cases

### **State of Iowa/Federal Legislative**

- Reviewed all bills prepared for each house of state legislature
- Drafted numerous legislative provisions which were enacted by General Assembly, others which were used to move legislation a particular direction or kill harmful legislation
  - Property Tax                      --TIF                      --Liquor licensing                      --Zoning
  - Apartment Taxation                      --Special Assessments                      --Liens
- Appeared at multiple hearings at the house and senate to give information to legislators, monitor legislation, draft legislation and amendments and craft solutions
- Met with multiple legislators to discuss various issues important to the City

### **Intergovernmental Services/Relations**

- Presentation to Metro Advisory Council
- Continued work on transition to Independent Botanical Center Managing Authority
- Continued work on transition to Independent Airport Authority
- Continued work on Independent Zoo Managing Authority

- Concluded DART Redistricting Analysis including multiple opinions, drafting, editing and ongoing advice; analysis of 28E Agreement
- Preparation of Multiple Documents related to multiple SSMIDs (Ingersoll, Downtown SSMID)
- Performance of Multiple Services for WRA
  - Compressed Biogas Agreement/Negotiations
  - SHPO/CSSSF issues
  - Engineering contract performance issues
  - Condemnation—Johnson Trust Appeal acquisition hearing
  - Property conveyance & acquisitions

### **Civil Service/Labor/Civil Rights**

- Prepared and conducted numerous Civil Service Commission hearings
- Opened/Defended numerous Iowa Civil Rights Commission Complaints
- Opened/Defended numerous HUD Complaints
- Conducted several unemployment hearings
- Conducted several grievance/discipline investigations
- PERB hearings
- Taught 3 courses at Iowa Law Enforcement Academy
- Worked closely with outside counsel to successfully negotiate numerous favorable labor agreements with several unions
- Drafted numerous opinions on multiple issues
- Continued work on Project Civic Access Consent decree enforcement—continuing work with DOJ on extending deadlines

### **Service to Other City Departments**

- Provided formal and informal legal advice on a daily basis
  - More than 110 formal opinions provided
  - Hundreds of informal opinions and email opinions provided throughout the year
- Drafted or reviewed hundreds of roll calls/resolutions/ordinances
- Administration of historic district and landmark regulations
  - Several historic district appeals
- Thousands of staff hours worked on large projects
- Hundreds of contracts or other types of Agreements negotiated, drafted
- Prepared or reviewed thousands of pages of Open Records Act requests for
- Conducted legal research for policy formation and implementation
- Daily conduct legal research for various departments throughout the City
- Work with IT & CD on appeal seeking correction of 2010 Census count & boundary errors
- Engaged in numerous Pretreatment or FOG Enforcement cases
- Multiple letters/emails written or reviewed for other City departments
- Provided advice, analysis and drafting on numerous HUD Programs
- Provided counsel to numerous boards/commissions

### **Real Estate**

- Over 90 real estate transactions reviewed/completed
- Drafted multiple Warranty, Special Warranty and Quit-Claim Deeds for City transactions
- Drafted multiple real estate sales agreements and leases



- Completed 51 Title Opinions
- Reviewed 119 property acquisitions & dispositions
- Successfully completed numerous condemnations and appeals
- Successful year in condemnation awards/judgments
- Preparation of easements and declaration of covenants to resolve building code issues
- Finalization of annexations

**Claims Against the City**

- Administered nearly 200 claims against the City
- Denied numerous claims and referred to litigators to defend
- Settled appropriate claims with clear liability
- Implemented new process for written notification/concurrence of department heads in claims decisions
- Took cases to trial as necessary

**Revenue Generation**

- Collected revenues in numerous categories

**Section 4: Goals and future issues for Jeff Lester and his leadership of the city. These will be basis for future reviews.**

The Council Personnel Committee has worked with Mr. Lester and recommends these goals for 2013 for the City Attorney and the Legal Team he leads:

**Future Legal Department Goals and Objectives for upcoming year:**

- Restructure Litigation Division after loss of two most senior attorneys and 25-year litigation secretary
- Prepare for transition in Litigation Division; Appoint new Litigation Deputy
- Continue work with legislature on matters of concern to the City of Des Moines, providing research, insight and testimony to advance the City's interests
- Given smaller staff and need for greater efficiency, work with senior City staff to address employee lawsuits (especially discrimination lawsuits), report writing, discretionary function immunity and general cooperation with Legal Department
- Expand cross training within the Legal Department
- Oversee litigation matters which are a priority to the Council to as favorable outcome as possible
- Improve Coordination/Interaction with City Departments
- Improve transactional representation of City Boards and Commissions

**Top Items of Importance for Legal Department in upcoming year:**

- Downtown parks programming agreement
- Prepare Training and Orientation for City Boards and Commissions

- Oversee litigation matters which are a priority to the Council to as favorable outcome as possible
- Adoption of revised nuisance ordinance
- Draft and adopt Cemetery ordinance for Parks Department
- RFP and draft agreement for WRA Biogas use
- Obtain closure of ACHP dispute between WRA/DNR/SHPO/OSA
- Refinancing of 2004 and 2006 WRA bonds
- Work on resolution with CenturyLink for Grand Ave bridge reconstruction delay
- Solicit ideas from existing staff as to how best use the legal assistant so as to make all attorneys more efficient in a smaller staff environment
- Implement first cross-trained projects and monitor/revise results

In addition, the three direct reports to the Council will work together on the following goals:

- Coordinate, draft and help execute a “Code of Conduct” with the City Council. The Personnel Committee believes strongly that a well communicated, detailed, and positive framework for interaction will benefit the city’s future.
- Develop and execute an orientation and training program for city Board and Commission members and the staff who support them. This will also include a review of all documents, policies and procedures for each Board/Commission to ensure that all outdated information is eliminated.

On behalf of the Committee, I whole heartedly encourage your affirmation of this report and approval of his compensation package.

Chris Coleman