

City Council Agenda Cover Memorandum

Meeting Date: September 28, 2010

Item Title: Davis Separation Agreement

Action Requested:

- Approval
- For discussion
- Feedback requested
- For your information

Staff Contact: Jim Hock
Phone Number: 847-318-5205
Email Address: jhock@parkridge.us

Background:

The City Manager entered and executed a separation agreement with former Community Preservation & Development Director Carrie Davis. The City Manager has financial authority to enter into contracts on behalf of the City up to \$20,000. The agreement exceeds the financial authority of the City Manager by \$5000. City Council approval is requested.

Recommendation:

Approve expenditure of \$5000 for the separation agreement between the City of Park Ridge and Carrie Davis.

Budget Implications:

Does Action Require an Expenditure of Funds: Yes No
If Yes, Total Cost:\$5000.00
If Yes, is this a Budgeted Item: Yes No

Attachments:

Davis Separation Agreement
9/16/10 City Attorney memo on City Manager's authority
9/26/10 City Manager memo on personnel savings

VOLUNTARY SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Voluntary Separation Agreement and Complete Release of All Claims ("Agreement") is made and entered into on the date set forth below by and between Carrie Davis, on behalf of herself, her agents, representatives, attorneys, assigns, heirs, executors and administrators (hereinafter collectively referred to as "Ms. Davis") and the City of Park Ridge, including the City's affiliates, predecessors, successors, representatives, attorneys, officers, elected officials, agents and employees, individually and in their representative capacities (hereinafter collectively referred to as the "City").

In consideration of the monies and mutual promises herein contained and other good and valuable consideration, the sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Ms. Davis hereby voluntarily and irrevocably resigns her employment with the City effective at the close of business on July 30, 2010, and the City hereby accepts Ms. Davis's resignation. The City and Ms. Davis hereby terminate any and all prior employment agreements between them, without further recourse.
2. The City agrees to make a one-time payment to Ms. Davis in the gross amount of (i) Twenty five thousand dollars (\$25,000.00), less applicable deductions for federal, state and local taxes. It is hereby acknowledged by Ms. Davis that the City's agreement to the payments described herein is in addition to any consideration to which she would have otherwise been entitled, including twenty days severance pay per the City employee manual, and that such payments constitute consideration for Ms. Davis's acceptance of this Agreement. In consideration for these payments Ms. Davis agrees not to file for unemployment benefits through the State of Illinois that would require the City of Park Ridge to reimburse the State for this expense.
3. Ms. Davis will also be paid for all unused vacation time and any other eligible accumulated time banks. Ms. Davis agrees that she has: (i) been paid for all hours worked; (ii) been paid for any accumulated time for which she was entitled to payment upon separation; and (iii) not suffered any on-the-job injury for which she has not already filed a claim.
4. By signing this Agreement and receiving the valuable consideration described above, Ms. Davis hereby fully releases and forever discharges the City from any and all claims or liability of any kind arising out of or relating in any way to Ms. Davis's employment with and separation of employment from the City, as well as any other occurrence up to and including the date of this Agreement including, but not limited to, any claim arising under the Illinois Public Labor Relations Act, 115 ILCS 5, et seq.; the Illinois Human Rights Act, 75 ILCS 5; the Wage Payment and Collection Act, 820 ILCS 115; Title VII of the Civil

Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; all claims under 42 U.S.C. §§ 1981, 1983, 1985, 1988; all tort claims; all claims for wrongful discharge; all claims based on actual or implied contract, including, but not limited to , any employment agreement between the City and Ms. Davis; all claims for retaliatory discharge; all civil rights claims and all amendments to the foregoing statutes, federal common law, state common law; and claims under any other federal, state or local statute, law, ordinance, regulation or order. It is the intention of Ms. Davis and the city that in executing this Agreement, Ms. Davis is providing a general release and that it shall be an effective bar to each and every claim, grievance, demand, and cause of action, either known or unknown, for all acts or omissions of the City and its agents, jointly and separately, individually and in their respective capacities, for any injuries suffered by Ms. Davis occurring on or prior to the date this Agreement and Release is executed. Excluded from this Agreement are any claims that cannot be waived by law. Ms. Davis specifically waives any right to any monetary recovery should any federal, state or local administrative agency pursue any claims on her behalf arising out of or related to her employment or the termination of her employment.

5. The parties agree and acknowledge that this Agreement and the consideration described herein does not constitute and shall not be interpreted as an admission of liability on the part of the City or Ms. Davis. This Agreement resulted from the parties' mutual desire to expeditiously resolve any and all matters and controversies between them, and to amicably effectuate Ms. Davis's employment separation from the City.
6. This Agreement constitutes the complete Agreement between Ms. Davis and the City. No other promises or agreements, either express or implied, shall be binding upon such parties unless hereinafter reduced to writing and signed by Ms. Davis and the City.
7. To the extent that any portion of this Agreement may be held to be invalid or legally unenforceable by a court of competent jurisdiction, Ms. Davis and the City agree that the remaining portions of this Agreement shall not be affected and shall be given full force and effect.

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8. Ms. Davis acknowledges that she has knowingly and voluntarily signed and entered into this Agreement, and that:
- a) This Agreement is written in a manner calculated to be understood by her, and she understands all of the terms of this Agreement;
 - b) In exchange for the waiver and release contained herein, Ms. Davis is receiving consideration in addition to anything of value to which she already is entitled.

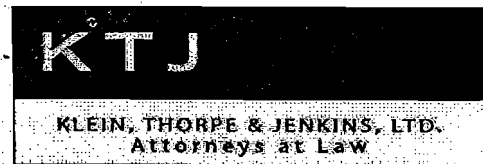
AGREED:

Carrie Davis 7-6-10
Carrie Davis Date

Witnessed by: Diane Reeves

CITY OF PARK RIDGE

By: James D. Hock 7/7/10
James D. Hock Date
City Manager



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MEMORANDUM

TO: Mayor and City Council
FROM: Buzz Hill and Kathie Henn
RE: Authority of City Manager
DATE: September 16, 2010

Introduction

This memorandum is written in response to your request for a memorandum regarding the City Manager's authority with respect to certain personnel decisions discussed at the July 12, 2010 Committee of the Whole Meeting. It also addresses issues raised at the September 7 City Council meeting. The specific issues concerned the employment of Carrie Davis until July 30, 2010 and her severance package, the continued employment of Aggie Stempniak through July 30, 2010 and the contract with her to produce the Spokesman, the change in title for Juliana Maller from Deputy City Manager to Assistant City Manager, the continued employment of Diane Lembesis, the offer of insurance to former Chief Ed Dubowski and receipt of deferred compensation for Chief Kaminski. The budgetary impact of these decisions is not addressed in this memorandum.

Municipal Code Provisions

Section 3-6-6 of the Park Ridge Municipal Code sets forth the duties of the City Manager. It provides that the City Manager is the chief administrative officer of the City and has management and control of all departments. Paragraph A of Section 3-6-6 provides that the City Manager has "the power to appoint and discharge any Deputy City Manager, Assistant City Manager, Assistant to the City Manager or Administrative Assistant to the City Manager or any department head." It also provides that the City Manager shall review any such proposed appointment or discharge with the City Council. Similarly, the City Manager has the authority to appoint and discharge all other employees, subject to civil service requirements and except for police and fire department employees governed by the Board of Fire and Police Commissioners. The City Manager also has the authority to "consolidate, combine or reorganize positions or units under the Manager's jurisdiction."

The City Manager also has authority with respect to the budget and purchasing by the City. He is "authorized to approve expenditures of \$20,000 or less for the procurement of goods and services for all departments of the City, provided that such expenditures are made within budget limitations and provided, further, that procurement requirements have not been artificially divided so as to avoid the requirements of paragraph B hereof." Section 2-9-9G of the Park Ridge Municipal Code.

City Manager's Authority for Specific Decisions

Based on the foregoing, the City Manager had the authority to discharge Ms. Davis from her employment and to determine the appropriate end date. With respect to Ms. Davis's severance payment of \$25,000.00, I have spoken to the City Manager and it was his belief that he had stayed within the overall budget for salaries for that department and that it was still less than the City would have been required to pay for two years of unemployment insurance. Nonetheless, even when previously budgeted, all expenditures in excess of \$20,000 do require City Council approval. The City Manager had the authority to discharge Ms. Stempniak and to determine the appropriate end date for her employment. The contract between the City and Ms. Stempniak to produce the Spokesman is under \$20,000.00. In addition, the severance paid to Ms. Stempniak was in the amount of \$2,520.00, pursuant to the Employee Manual.

The City Manager also had the authority to appoint Ed Dubowski to the position of Fire Administrator based on his ability to consolidate, combine or reorganize positions under the Manager's jurisdiction and his authority to appoint other employees as set forth above. As explained by the City Manager, Mr. Dubowski was appointed on a temporary basis due to the vacancy in the Chief's position and the captain's position and he was not provided any benefits, including insurance. Last, the City Manager had the authority to hire Diane Lembesis on a part-time basis. As explained in the City Manager's memo dated July 1, 2010, Juliana's title remains Deputy City Manager.

The payment of deferred compensation for Chief Kaminski was part of the employment offer made to him. The payment of the deferred compensation amount is included in the budget. Prior to the appointment of any department heads, such as Chief Kaminski, the City Manager reviews the appointment with the City Council. This process was also followed prior to Carrie Davis' appointment to the position of Director of Community Preservation and Development and Craig Gjelsten to the position of Fire Chief.

Salaries for Employees

Section 3-6-6E of the Code provides that, "The City Manager shall recommend to the Mayor and the City Council the salaries to be paid each hired and appointed

employee of the City.” We have been asked whether or not this requirement has been observed. The practice has been that salary recommendations are included in the proposed annual budget. It is our opinion that this complies with the requirement for those employees hired and appointed at the time of adoption of the budget. This practice arguably does not cover those who are hired or appointed subsequent to the adoption of the budget each year. However, it is not standard practice, and it may not be practical for the City Manager to bring the wages or salary of every new hire to the Council for approval. And as a practical matter, the City Council would be notified of such salary at the formation of the next proposed budget. To resolve this issue, the Council might wish to amend the Code to add the words, “As part of the budget process,” at the beginning of Section 3-6-6E. In addition, salaries and wages for union employees are governed by the applicable collective bargaining agreement.

Please let us know if you have any additional questions or wish to discuss any of these issues.



CITY OF PARK RIDGE

M E M O R A N D U M

OFFICE OF THE CITY MANAGER

TO: Mayor and City Council
FROM: Jim Hock, City Manager
RE: Personnel savings
DATE: August 26, 2010

Per the request of the Mayor, attached are copies of the separation agreements with Aggie Stempniak and Carrie Davis. All of the separation agreements with these and other employees who took advantage of our retirement incentive were reviewed by the City Attorney.

Alderman Carey asked for an examination of the financial impact of all of the administrative changes we made as a result of the adoption of the Fiscal Year 2010/11 budget:

Contract for services with Aggie Stempniak are for \$4000/issue (\$5000 for the centennial issue). The Spokesman is published 6 times per year thus costing \$25,000 per fiscal year. This was in the Council approved budget. I entered into a separation agreement with the understanding her employment continues through July 31, 2010 and she cannot collect unemployment thereafter. There was nothing but severance provided per City policy. Two Spokesman's issues were produced during her continued employment thus reducing the contract for services to \$17,000 for the remainder of the fiscal year.

Information Services Budget:

Budgeted Costs:

Contract for Spokesman(6 issues)	\$25,000
Unemployment expense	\$20,020
Severance	<u>\$2,520</u>
<i>Total</i>	<i>\$47,540</i>

Our Mission:

THE CITY OF PARK RIDGE IS COMMITTED TO PROVIDING EXCELLENCE IN CITY SERVICES IN ORDER TO UPHOLD A HIGH QUALITY OF LIFE, SO OUR COMMUNITY REMAINS A WONDERFUL PLACE TO LIVE AND WORK.

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Actual Costs:

13 weeks continued employment	\$13,455
Medical/dental	\$1,180
IMRF/FICA	\$2,778
Severance	\$2,520
Contract for Spokesman(4 issues)	<u>\$17,000</u>
<i>Total</i>	\$36,933

Savings of \$10,607

Carrie Davis was on the payroll until July 31, 2010. She was provided \$25,000 in a separation agreement and severance per City policy (4 weeks). Unemployment will not be paid as part of the separation agreement that would have cost \$27,644/year for up to two years.

CP&D Budget:

Budgeted costs:

Salary(CP&D Director)	\$103,000
Medical/dental	\$15,300
IMRF/FICA	<u>\$21,270</u>
<i>Total</i>	\$139,570

Actual Costs:

13 weeks continued employment	\$25,740
Medical/dental	\$3,825
IMRF/FICA	\$5,315
Severance	\$7,923
Separation agreement	<u>\$25,000</u>
<i>Total</i>	\$67,803

Actual Costs:

Salary for remainder of fiscal year(CP&D Manager)	\$63,751
IMRF/FICA	\$13,164
Medical/dental	<u>\$3,825</u>
<i>Total</i>	\$80,740
Cost of	\$8,973

Administration Budget:

Promoting Cathy Doczekalski to CP&D Manager vacating her former position of Assistant to the City Manager for the remainder of the fiscal year will create a **Savings of \$31,320.**

Finance Budget:

The Finance Director position is still unfilled. If I presume hiring/start date of October 1, 2010, the savings from budgeted expense is \$69,213. The former Finance Director has

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worked approximately 150 hours costing \$10,500. Acting pay for the Deputy will cost \$5,267 for a **Savings of \$53,446.**

Fire Department Budget:

An assessment center process for selection of the Fire Chief will be conducted 8/27/10 and I will presume a hiring/start date of October 1, 2010. Ed Dubowski served as Fire Administrator from May 17th to August 6, 2010. Salary and personnel expense will amount to a **Savings of \$42,675.**

These add up to a total of \$129,075 under budget.