

MEMORANDUM

DATE: August 10, 2022
TO: Rebecca Kellen, City Administrator, Mayor and City Council
FROM: H. Alan Kantrud, City Attorney

AGENDA ITEM: City Council Pay Increase/Payments

BACKGROUND: The City Council passed pay increases for both the Council and the Mayor in a process that spanned two months: October and November of 2020. The Council and Mayor realized those increases in pay in December 2021. A question has been presented about the propriety of those increased payments based on the timing of the passage of them and the restrictions imposed by State Law.

ANALYSIS: The City Council deliberated and passed increases in stipends for both the City Council and Mayor, which is perfectly appropriate. The only restraint imposed by law for such increases is that the electorate gets a chance to “punish” or “reward” such maneuvers by requiring that any increases voted on not take effect until *after* the next Municipal Election. The law reads:

415.11 SECOND TO FOURTH CLASS CITIES; GOVERNING BODY SALARIES.

Subdivision 1. Set by ordinance.

Notwithstanding the provisions of any general or special law, charter, or ordinance, the governing body of any statutory or home rule charter city of the second, third or fourth class may by ordinance fix their own salaries as members of such governing body, and the salary of the chief elected executive officer of such city, in such amount as they deem reasonable.

Subd. 2. After next election.

No change in salary shall take effect until after the next succeeding municipal election.

In this case the Council did not *formally* pass the increases until its meeting in November, 2020; a week after the General Election. At that time, Tobin lay was in his last meeting as City Administrator in November of 2020. The increases were not paid in 2020 and the budget for 2021 should have been set too by then (November 2020) for the salaries that year. Mr. Lay confirmed that he knew what the CC did, as well as the law, and that he took no steps to implement it in 2020.

The new Clerk, Andy Gonyou, may not have gotten a transition-memo from Mr. Lay at the time when he took over in December 2020 and applied industry-logic and not public employee standards/the law to this issue. So when he saw a recently-passed salary increase he just went ahead and adjusted it as that is what would have happened in the private-sector. Regardless of the rationale, that is what happened.

Per State Law, the Council's stipends should not have taken effect until at least January 2023: the first year *after* the "next" election *after* the stipend was passed in November 2020.

FISCAL IMPACT: No impact is anticipated as this would be a corrective from last year to balance the books.

STAFF RECOMMENDATION:

City Staff recommends the withholding of pay this year in the amount of the improvidently made payments to Council and Mayor in 2021.

CITY COUNCIL ACTION:

Motion: _____ Second: _____

Approved: _____ Disapproved: _____ Tabled: _____

Other: _____

Birchwood salaries

Mary Wingfield <wingfield.mary@gmail.com>

Tue 11/15/2022 9:14 AM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

Cc: Alan kantrud <Prairiehabaneros@googlemail.com>

Becky...Please add this as a supplemental addendum to tonight's meeting like you did with Alan Kantrud's memo.

Item K

There is a memo in the packet that suggests there is a double salary payment for Kevin Woolstencroft, Jon Fleck and myself. This matter was placed on the agenda without conferring with us.

Fyi, both Jon and I (and presumably Kevin, although OML prevents me from conferring with Kevin) were paid the proper amount every year. In one year (and maybe others), our annual payment was pushed into January the following year of when payment was earned.

I am not sure why we were not contacted, but it is an egregious error in judgment. This is an affront to Jon, Kevin and me. We are being accused taking funds to which we were not entitled. As public servants who have spent an enormous number of volunteer hours looking out for the public's interest, this is the ultimate impugning of our integrity and reputation.

An apology is warranted from anyone who failed to extend the simple courtesy of conducting a proper investigation prior to making such a scurrilous claim. Please remedy this situation immediately.

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