



TO: Mayor Shaun Sipma
Members of the City Council

FROM: Kelly Hendershot

DATE: November 21, 2018

SUBJECT: APPOINTMENT OF CONTRACT ATTORNEY

I. RECOMMENDED ACTION

- A.** The City Council appoint Attorney Caitlyn A. Pierson to represent the City of Minot in the prosecution of municipal ordinance violations.
- B.** Authorize the Mayor to sign any agreements relating to Attorney Pierson’s appointment.

II. DEPARTMENT CONTACT PERSONS

Kelly Hendershot – (701) 857-4755

III. DESCRIPTION

A. Historical Background

Prior to 2009, the City retained outside counsel to act as the City Attorney for the City of Minot. Prosecution was handled, through a contract, by the Ward County State’s Attorney’s Office. Sometime prior to 2009 the Ward County State’s Attorney’s Office determined it was not able to continue providing the prosecution services to the City due to their overwhelming workload. The City determined it was advisable to hire a full time City Attorney to fulfill the role of prosecutor and advisor for all other legal matters involving the City of Minot. In 2012, the City determined it was necessary to hire an additional attorney to handle the prosecution of municipal ordinances and to assist with the civil legal matters.

B. Current Situation

The City Attorney’s office currently consists of two attorneys, one full-time legal assistant, and one part-time legal assistant. This office is responsible for prosecuting all criminal ordinance violations, infractions, and traffic code violations. With that, this office represents the City at municipal court Monday through Friday. Initial appearances, pretrial conferences, orders to show cause, and bench warrant appearances occur each day; bench trials and motion hearings take place at municipal court on Tuesday, Wednesday, and Thursday. This office also appears at district court for initial appearances, pretrial conferences, bench warrant appearances, and jury trials. If necessary, and in limited circumstances, this office would appear at the North Dakota Supreme Court for ordinance violations matters appealed to that level. This office also ensures full compliance with Marsy’s Law.

In addition, this office is responsible for providing legal advice to City leadership, management, and staff. Those responsibilities include, but are not limited to, ordinance drafting; contract/document drafting and/or review; statutory and ordinance interpretation; and advising on legal matters, procedural issues, and open records/open meetings issues at City Council and committee meetings.

Beyond that, this office manages all litigation files and works with outside counsel to ensure all matters are being handled efficiently and in the best interests of the City.

In recent years, the workload has become more consuming due, in part, to an increased amount of time spent on prosecution matters; unprecedented litigation matters; and the City’s increased activities with federal funds (CDBG-DR Funds; NDR Funds) and flood control projects. Beyond that, City staff and City Council members have identified numerous antiquated or non-existing ordinances, policies, and processes that should be updated or adopted.

C. Future Plans

This office worked with the City Manager to determine the best approach for addressing the current workload. Previous requests for an additional attorney were denied/postponed internally during the budget process. For the 2019 budget this office requested, and the City Council approved, an increase in the “Contracts” line item, in part, to address this situation. The reasons for a contract position rather than a full time employee include cost savings¹, lack of office space for additional employee, and ability to determine whether this should be a temporary or permanent position.

If the City Council moves forward with this recommendation and outside counsel is retained to handle the prosecution of municipal ordinance violations, the additional time would likely be spent on more substantive contract review; ordinance drafting and revision; and development of form documents, internal manuals, and policies.

D. Other Cities

During the budget preparation, this office researched other cities’ attorney offices to determine how the City of Minot aligned. The information below was gathered at that time:

Minot	2 FT Attorneys; 1.5 Legal Assistants
Bismarck	3 FT Attorneys; 1 Senior Legal Assistant; 2 Legal Assistant
Fargo	Civil: 3 FT Attorneys; 2 Legal Assistants Prosecution: 1 FT Attorney (Civil Attorneys cover during absence); 2.5 Legal Assistants Litigation: Majority is Handled by Outside Counsel
Grand Forks	2 Law Firms Retained (one for civil; one for prosecution)
West Fargo	2 Law Firms Retained (one for civil; one for prosecution)
Williston	1 Law Firm Retained (3 Attorneys at \$175/hour)

¹ The FY2018 City of Minot Salary Plan provides that an Assistant City Attorney is a grade 70 position with Step 1 (min step) salary being \$71,432; Step 9 (mid step) being \$87,032; and Step 17 (max step) being 106,041. Those salaries do not include benefits or operating expenses.

E. Recommended Appointment

This office recommends the appointment of Attorney Caitlyn Pierson. As you will see from the attached documents, Attorney Pierson is a former Assistant State's Attorney for Ward County. She is currently a sole general practitioner in Minot. Attorney Pierson has extensive prosecutorial experience and she is agreeable to prosecuting all municipal ordinance violations on behalf of the City of Minot for a flat rate of \$6,000/month.

For a rate comparison, this office reached out to a well-respected criminal defense attorney in Minot and it was suggested that \$200-\$250/hour would be a very reasonable rate. Last year, to assist with a maternity leave, the City approved the appointment of Christine Reiersen and she was paid \$4000/month for prosecuting only in municipal court. The City also currently pays its public defender at a rate of \$75/hour. If Attorney Pierson is appointed and she works 20 hours/week for 4 weeks, her rate will be \$75/hour. It is anticipated that Attorney Pierson will spend at least 20 hours per week on the City's prosecution.

IV. IMPACT:

The fiscal impact of this item will be \$6,000/month or \$72,000/year. This was budgeted in the City Attorney's 2019 budget, 001-0400-415.03-90.

V. ALTERNATIVES

- A. The City Council could propose an alternative option.
- B. The City Council could decide not to appoint an attorney for prosecution of municipal ordinance violations.

VI. TIME CONSTRAINTS

This appointment is contemplated to begin on January 1, 2019.

VII. LIST OF ATTACHMENTS

- A. Scope of Work
- B. Caitlyn Pierson's Cover Letter and Resume