

Administrators Memorandum

TO: Mike Pearson, Mayor
Dave Snyder, City Attorney
FR: Dean Zuleger, City Administrator
RE: Adam Bell Severance
DA: June 25, 2015

Background

In the fall of 2012, the City entered into an agreement with Adam Bell to become the City Clerk. This agreement was ratified by contract and contained language with regard to discharge, separation and severance. This contract was reviewed and approved by the City Council. Section 3.0 of the Bell Employment Contract entitled Termination of Agreement deals with matters of termination for cause, termination without cause and voluntary resignation. The paragraph on voluntary resignation states:

If the City Clerk decides to terminate employment with the City of Lake Elmo, the City Clerk is required to give a minimum of thirty (30) days written notice of intent to terminate and shall be entitled to severance compensation.

The article of difficulty is the phrase "shall be entitled". After extensive review, it appears that the foundation of this contract was the Administrator's contract which has a similar cause on voluntary resignation that says "shall not be entitled". It is my learned opinion that the exclusion of the word "not" in Mr. Bell's contract (as well as the contract of the Finance Director) is akin to a Scriveners Error – or plainly put - a typographical error of omission when the contract was typed. Further, no formal discussion of severance was had with Mr. Bell prior to the signing of the contract, nor subsequent to his resignation.

If strictly applied to the corresponding schedule of severance found in Section 3.0, this contract would entitle Mr. Bell to 2 month's severance based on years of service.

Recommendation

It is the recommendation of the Administrator to appease this errant reference with Mr. Bell by offering one month's severance in exchange for his availability / assistance in the ongoing operations of the City of Lake Elmo and assistance in the transition to a new City Clerk. This availability / assistance would be for 30 days after his final day – June 25, 2015. The nature of the availability / assistance would be by telephone or email.

Further, it is the recommendation of the Administrator to correct the two remaining contracts with the Finance Director and the Building Inspector where this errant reference remains.

EMPLOYMENT TERMINATION

Below are examples of common circumstances under which employment is terminated.

RESIGNATION	Employment termination initiated by an employee who chooses to leave the City of Lake Elmo voluntarily. If you intend on terminating employment with us, we ask that you put your resignation in writing and provide at least two (2) weeks' notice. Unused accrued vacation time will be paid.
DISCHARGE	Involuntary employment termination initiated by the City of Lake Elmo for disciplinary reasons. Unused accrued vacation time will be paid.
RELEASES AND LAYOFFS	Involuntary employment termination initiated by the City of Lake Elmo for non-disciplinary reasons. Unused accrued vacation time will be paid.
MEDICAL TERMINATION	Employment termination initiated by the employee or by the City of Lake Elmo when an employee is unable, for health reasons, to continue to work and perform the essential functions of the job. Unused accrued vacation time will be paid.
RETIREMENT	Voluntary retirement from active employment status initiated by the employee. Unused accrued vacation time will be paid.
JOB ABANDONMENT	No-call, no-show, or other failure to report to work.

The City of Lake Elmo has the right to terminate an employee at any time for any reason, except those prohibited by law, with or without cause. If you have used any unearned vacation prior to your termination, the amount of the vacation will be deducted from your final paycheck.

All of your employee benefits will be affected by employment termination. Health insurance coverage, at our rates, may be continued at your expense as specified by COBRA. You will be notified in writing of the terms, conditions, limitations, and costs associated with continuation coverage. Please ask your Department Head(s) if you have any questions.

When an employee leaves the City of Lake Elmo, whether their separation is voluntary or involuntary, the employee will be required to participate in an exit interview with the Department Head and City Clerk/HR Director to further understand the reasons for leaving. Any property of the City of Lake Elmo in your possession at termination must be returned to your immediate Department Head(s) no later than your last day of work. A forwarding address must be furnished so we can send you a W-2 at year-end.

SEPARATION FROM SERVICE

Resignations

Employees wishing to leave the City service in good standing must provide a written resignation notice to their supervisor, at least ten (10) working days before leaving. Exempt employees must give thirty (30) calendar days notice. The written resignation must state the effective date of the employee's resignation. Failure to comply with this procedure may be cause for denying the employee's severance pay and any future employment with the City.

Severance Pay

Employees who leave the employ of the City in good standing by retirement or resignation will receive pay for 100% of unused accrued vacation (*annual leave*).