**UNIVERSITY CITY COUNCIL**

**SPECIAL SESSION**

5th Floor of City Hall

6801 Delmar

January 18, 2017

2:00 p.m.

1. **MEETING CALLED TO ORDER**

The City Council Special Session was held in the Council Chambers on the fifth floor of City Hall, on Wednesday, January 18, 2017. Mayor Shelley Welsch called the Study Session to order at 2:01 p.m.

1. **ROLL CALL**

In addition to the Mayor, the following members of Council were present:

Councilmember Rod Jennings; *(Excused)*

Councilmember Paulette Carr

Councilmember Steven McMahon

Councilmember Terry Crow

Councilmember Michael Glickert; *(Excused)*

Councilmember Bwayne Smotherson

Also in attendance was the Acting City Manager, Charles Adams; LaRette Reese; City Attorney, Kathryn Forster and Director of Finance, Tina Charumilind.

Hearing no requests to amend the agenda, the Mayor proceeded as follows:

1. **AGENDA**

City Clerk position. Discussion on utilizing a temp service to find a candidate to act as City Clerk on a temporary basis during current City Clerk’s temporary leave.

Councilmember Carr stated at the last Study Session Council explored the possibility of utilizing a temporary employee to assist with some of the responsibilities associated with the City Clerk's position. Thereafter, she had been asked to provide Council with additional information on the services offered by GovTempsUSA.

**General Information:**

* The Position Announcement similary to what would be placed to advertise the position
* The rate of pay could be up to $30.00/ hour; dependent upon their qualifications
* Temps are only paid for the days and hours they work
* There is no finder's fee
* The Acting City Manager would be granted the authority to sign the employment contract

Ms. Carr stated that she had obtained the following information pursuant to questions generated by members of Council:

* Temporary employees are entitled to overtime pay. *(To control costs, Ms. Carr suggested that the temporary employee's hours be reduced during the week to compensate for their attendance at nightly meetings.)*
* Duration of the position. Mike Earl, Senior Vice President of GovTempsUSA, advised Ms. Carr that in order to increase the City's applicant pool a relatively firm length of employment should be established and included in the Position Announcement. For example, if the anticipated length of employment is three months, and the employee returns to work sooner than anticipated, the City would give the temp a 30-day notice. The temp would then be allowed to continue their employment for 30 days or leave early, upon securing another position.

Councilmember Carr stated that the intent of the federal government with FMLA was to protect an employee by ensuring that there would be an equivalent position waiting for them, but the business of the City cannot stop. So, in her mind, this temp employee should be someone who can act in the same capacity as the City Clerk with respect to being a custodian of the records, signing Ordinances, et cetera.

City Attorney, Ms. Forster stated that per the Code and Charter, the City Clerk is an officer of the City, with the primary function of authenticating, by signature, Ordinances, Resolutions, and contracts. So her concern is that technically, a temp is an individual who is paid on an hourly basis, which does not meet the same qualifications established for an officer of the City. However, a temp could be hired to do clerical prep for the meetings, respond to Sunshine requests, et cetera.

Councilmember Carr questioned whether Council could pass a Resolution or an Ordinance to address those primary functions? Ms. Forster stated every department head within the City is declared an officer. So, Council could add the duties associated with authenticating and signing all applicable documents to any one of those officers by passing an Ordinance outlining the duties and what director they will be assigned to. Councilmember Carr questioned whether Council could pass an Ordinance that essentially granted authority to a temporary employee to act in the capacity of the City Clerk and perform all of their duties? Ms. Forster stated that technically, the City still has a City Clerk who is on leave, so such an Ordinance would create two City Clerk positions for the same period of time. Councilmember Carr stated although it would have been easier to find someone who is already in the employ of the City to take on these responsibilities, it appears as if there is no one available to do so. Consequently, the position is vacant, and her assumption is that the temporary employee would be treated as the Acting City Clerk, in lieu of Ms. Pumm's absence. She then questioned whether the City Manager could be appointed to attest to documents? Ms. Forster stated that since the City Manager already signs contracts, adding the attestation aspect to his duties could lead to confusion. So, in spite of the fact that she does not want to put any more on Director of Finance,Tina Charumilin, her opinion is that she would probably the best department director to take on the responsibility of authenticating Ordinances and Resolutions.

Councilmember Carr questioned whether the fact that the Ordinance also designates that the City Clerk shall be the custodian of the records, would present a problem if the temporary employee was asked to perform those duties? Ms. Forster stated that both the Code and Charter specifically require the City Clerk to authenticate and keep a journal of the Ordinances and Resolutions. So, her belief is that a temp could handle the responsibility of keeping the City's records. Councilmember Carr noted that she was specifically referring to Section 150.020, which designates the City Clerk as the custodian with respect to the Sunshine Law. Ms. Forster stated that Council could change that specific designation and assign it to the temp, but it would have to be done by a Resolution, and it would also have to be on a temporary basis.

Mayor Welsch informed Ms. Forster that Ms. Reese was currently handling the Sunshine requests and asked if it was legal for her to do so? Ms. Forster stated that although Ms. Reese has not been designated to handle this task, the City has to respond in three days, so this situation dictates the need for someone to handle the requests. Mayor Welsch asked if an Ordinance would be necessary to have a temp handle this work? Ms. Forster stated that technically, an Ordinance is needed for either Ms. Reese or a temp to perform the work. Mayor Welsch asked if Council could draft a general Resolution indicating that the tasks could be performed by anyone acting on behalf of staff, or whether it needed to be more specific? Ms. Forster stated that the Resolution needed to designate a specific individual. Mayor Welsch questioned whether the following language would be sufficient: *"During this interim period the director of a specified department, shall be authorized to authenticate Resolutions and Ordinances on behalf of the City"*? Ms. Forster stated that it would be. Mayor Welsch asked if such a Resolution could be added to Monday's agenda? Ms. Forster stated the Department of Finance Director's position asserts that she can perform other duties as may be imposed by this Code or by any other Ordinance. Typically, Ordinances need three readings unless it falls under the category of an Emergency Ordinance. However, she is not certain whether this situation would meet that criteria. Mayor Welsch asked Ms. Forster if the delegation could be accomplished by a Resolution? Ms. Forster stated that based on the Code, the addition of other duties must be governed by an Ordinance. Mayor Welsch asked whether the City had the option to courier documents to Ms. Pumm for signature? Ms. Forster stated that she did not believe so.

Councilmember Carr stated Ms. Pumm advised Council that she would begin her leave on January 6th, and yet, there was a Proclamation dated on the seventh with her signature. So, she wanted all of her colleagues to understand that they should not impose upon Ms. Pumm, since she is entitled to her leave. Mayor Welsch informed Ms. Carr that the Resolution had been signed prior to Ms. Pumm's email to Council. Ms. Carr responded that the date should have been corrected.

Mayor Welsch stated that some of her concerns were based on the issues that Council ran into regarding whether Mr. Adams should be called the Acting or Interim City Manager. Ms. Forster stated that interim would be incorrect since Ms. Pumm is still employed in this position. So she would suggest Acting or Temporary City Clerk.

Councilmember Carr stated that in her opinoin, it should be acting, because Temporary City Clerk would be confusing to most people. She added that the Position Announcement would put everyone on notice that this is a temporary position. Mayor Welsch stated that she had no qualms with the use of acting.

Councilmember Carr concluded that the next step was to pass the appropriate Ordinances.

Councilmember McMahon stated as it relates to the signing and attesting to Ordinances, if Ms. Pumm is on leave, can no longer fulfill her duties, in spite of the fact that her employment status remains active, she is no longer the City Clerk. So why can't Council just hire another City Clerk to handle those responsibilities? There is nothing in the Charter that states Council cannot hire someone if an employee becomes unable to perform their job; it simply says that *"Council can hire a City Clerk".* Ms. Forster stated that although Ms. Pumm cannot perform her functions while she is on leave, her opinion is that those functions should be reassigned to another individual. Hiring another City Clerk technically means that the City would now have two individuals holding this position. And she also does not believe that a temporary employee should be given the flat title of City Clerk, based on the fact that they are a temp. Councilmember McMahon asked Ms. Forster if she was relying on something more distinct than the Charter? Because his understanding of the ADA which states, *"Until they are restored,"* means that someone is being put back into their position. And based on that understanding, you really would not have two City Clerks; you have an individual on leave that will be restored to the position of City Clerk once that leave ends. Ms. Forster stated that she had relied on the language contained in both the Code and the Charter, and did not have a statute to that effect. However, her understanding is that when an employee leaves their responsibilities are reassigned, not taken away, and they are also allowed to retain their title. Councilmember McMahon stated that the issue is not so much about Ms. Pumm's title; which she will be restored to, but rather what her job responsibilities are. Ms. Forster asked Councilmember McMahon if he was saying that in the interim, Council should have the authority to hire another officer to replace Ms. Pumm? Councilmember McMahon stated that based on his reading of the Charter it seems to be more straightforward. But, if the passage of a Resolution or an Ordinance is the easiest stop-gap measure, then he would be fine with that.

Ms. Forster asked Councilmember McMahon if his interpretation of *"Council shall elect an officer,"* is that this body can hire someone now to act as an officer of the City and terminate their employment once Ms. Pumm returns? Councilmember McMahon stated that it was because the City Clerk serves at the pleasure of the Council. Ms. Forster asked whether he believed that an hourly employee, who might not even work five days a week, should be considered an officer of the City? Councilmember McMahon questioned whether the Charter provided any further definition of the term *"officer"?* Ms. Forster stated that from an employment standpoint, any department director whose salary payments are based on an annual amount is considered a salaried employee, and based on the language in the Charter, that makes them an officer of the City. And that is the rationale behind her recommendation to utilize a Resolution or an Ordinance to handle this matter. Councilmember McMahon stated that he would be amenable to following Ms. Forster's recommendation.

Councilmember Smotherson stated his belief is that Ms. Forster's analogy with respect to spreading Ms. Pumm's responsibilities around to other individuals is not applicable under these circumstances. This is a skilled position with detailed responsibilities, so Council needs to hire a qualified individual to fulfill this position.

Ms. Forster stated one concern is that it will take a temp some time to gain an understanding of their responsibilities. Therefore, consideration should be given to selecting someone who already has a connection to the City, the responsibility of signing off on Resolutions and Ordinances.

Councilmember Carr informed everyone that she had already provided the job description to Mr. Earl. So he has a good sense of the duties and is looking for someone who has either done or is familiar with, this type of work.

Mayor Welsch asked Councilmember Carr if the contract language which states, *"Benefits included up to 3 percent employer-matched IRA,"* referenced the benefits being offered by GovTemps? Councilmember Carr stated that although she is not certain, she understood *"employer-matched IRA,"* to mean GovTemps' employer-matched IRA, since this person is an employee of GovTemps and not the City. However, she would be happy to step outside and make a phone call, if the Mayor would like? Mayor Welsch stated she believed such a clarification would be beneficial. Councilmember Carr stated, for now, she would like Council to make the assumption that the cost would be passed on to the City until she can make the call to determine otherwise. Mayor Welsch stated her concern is that if the cost is passed on to the City, it would increase the cost to 15 percent above Ms. Pumm's salary. Councilmember Carr stated that with all due respect, this is a situation that has been put in Council's lap where there may not be a good solution.And while it's her understanding that the Mayor has attempted to make inquiries through the City Clerk's Association, this may be the best solution. Mayor Welsch stated that she had made such an inquiry, but, it had not been publicized elsewhere. Her concern, especially if Ms. Pumm comes back a week after this person is hired, is that the City will be responsible for another full month of the temp's salary, plus the 3 percent. Councilmember Carr stated that's the cost of doing business. But, the ultimate decision is up to Council, so if anyone has another way to do it, fine. However, she did not want to get into a situation where 30 days from now Council is still scrambling around trying to make a decision because this really needs to happen within the next 14 days.

Mayor Welsch stated she did not know the correct protocol but wondered whether it was possible to go forward with GovTemps and at the same time publicize the position on the City's website and various publications? Councilmember Carr stated she did not believe the two things could be done simultaneously; either you enter into a contract with GovTemps, or decide to go another route. But, whatever the case, she was in total agreement with Councilmember McMahon's suggestion to implement a plan so that if the need arises in the future, there will be a much faster turnaround. She then thanked Mr. Adams and Ms. Reese for being exceedingly generous in their support to Council.

Director of Finance, Tina Charumilind, stated that the City is not going to get a qualified person for much less than $40.00 an hour. So GovTemps' rate of 40 percent is reasonable. When she needs an accountant, she utilizes AccountTemps to ensure that she receives qualified applicants, and her belief is that GovTemps probably follows the same practice of retaining individuals who have the specific experience needed for this position.

Councilmember Crow thanked staff for their support. He stated it is clear, through a variety of factors, that this position has a backlog. So, his belief is that Council is splitting hairs, unnecessarily; should follow Ms. Forster's recommendation, and get this on Monday's agenda. Councilmember Crow stated his guess, is that the IRA pass-along is probably negotiable, but either way, it should not be a deal-breaker.

Councilmember Carr made a motion to begin the process of finding a temporary replacement by utilizing the services offered by GovTempsUSA. Once a temp is selected, the contract should be submitted to the City Manager and Director of Finance for processing; seconded by Councilmember Smotherson.

Roll Call Vote Was:

**AYES**: Councilmember Carr, Councilmember McMahon, Councilmember Crow, and Councilmember Smotherson, Mayor Welsch

**NAYS:** None.

1. **CITIZEN  COMMENTS**

Jeff Hales, 7471 Kingsbury, University City, MO

Mr. Hales posed the following questions to Council:

1. Will a department head assume the responsibilities of signing and attesting to Resolutions and Ordinances?
2. Once a department head is selected, who would they be responsible for reporting to?

With respect to the emails containing legal opinions, he asked:

1. Why were two conflicting legal opinions given, and what precipitated the second opinion?
2. If the second opinion was precipitated by a question, what was the question being asked?
3. Why does the second opinion seem to contradict the opinion provided 39 days earlier?
4. Since it is apparent that two of Council's employees were in possession of these legal opinions, why did they fail to divulge this information to Council on July 11th?

Mr. Hales stated that he found the emails very concerning, and believes that had the City Attorney been in attendance at the July 11th meeting when these questions arose, the City would not be in this mess. Council needs to be apprised of legal opinions, especially when they are issued to their employees, and that should be a matter of policy.

Mr. Hales thanked Mr. Adams and Ms. Reese for providing him with information on almost all of his Sunshine requests. He stated that he was also impressed with Public Works. Their proactive treatment of the streets in preparation for the impending storm was unlike anything he has ever seen in U City.

1. **Motion to go into a Closed Session according to Missouri Revised Statutes 610.021 (1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys and (3) Personnel hiring, firing disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded.**

Councilmember Carr moved to go into Closed Session, was seconded by Councilmember McMahon.

**Roll Call Vote Was:**

**AYES: Councilmember Carr, Councilmember McMahon, Councilmember Crow, and Councilmember Smotherson, Mayor Welsch**

**NAYS: None.**

1. Adjournment

Mayor Welsch adjourned the open meeting at 2:35 p.m.