

AGENDA ITEM SUMMARY

March 17, 2015

City Council

STAFF

Janet Miller, Human Resources Director

SUBJECT

Items Relating to the Appointment, Salary and Employment Contract of the City Attorney.

EXECUTIVE SUMMARY

- A. Resolution 2015-036 Appointing Carrie Daggett as City Attorney and Approving the City Attorney's Employment Agreement.
- B. Second Reading of Ordinance No. 039, 2015, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney.
- C. Administration of Oath of Office for the City Attorney.

The purpose of the resolution is to appoint Carrie Daggett as the new City Attorney and to approve the employment agreement of the City Attorney. Ordinance No. 039, 2015, unanimously adopted on First Reading on March 3, 2015, establishes the 2015 salary of the City Attorney at \$177,000.

STAFF RECOMMENDATION

Not applicable.

BACKGROUND / DISCUSSION

Following the unexpected death of City Attorney Steve Roy in July 2014, Deputy City Attorney Carrie Daggett was appointed by the Council to serve as the Interim City Attorney. The process for recruiting Mr. Roy's replacement was established by Council and recruitment efforts began in October of 2014. The process resulted in the receipt of 23 applications. That pool was narrowed to a group of 3 finalists who were interviewed in January and February by Council as well as community and staff members. On February 17, 2015, Council identified Carrie Daggett as the leading candidate. Mayor Karen Weitkunat and Councilmember Gerry Horak were appointed by Council to begin negotiations with Ms. Daggett regarding the terms and conditions of employment for the new City Attorney.

This Resolution appoints Carrie Daggett as the City Attorney for the City of Fort Collins and authorizes the Mayor to execute an employment contract with Ms. Daggett. Additionally, Ordinance No. 039, 2015 Amends Section 2-581 of the City Code to establish the initial base salary of the City Attorney as \$177,000 per year. Total compensation which includes health, life and disability insurance as well as retirement benefits is reflected in the attached 2015 City Attorney Compensation Calculator (Exhibit A).

ATTACHMENTS

- 1. 2015 City Attorney Compensation Calculator (PDF)
- 2. Oath of Office (PDF)
- 3. Powerpoint presentation(PDF)

ATTACHMENT 1

Prepared by Human Resources

March 7, 2015

City Attorney Compensation Calculator

2015

<u>Monetary</u>	
Base Salary	177,000
Medical Insurance	8,940
Dental Insurance	540
Life Insurance	310
Long Term Disability	818
ICMA 457	5,310
ICMA 401	17,700
<u>Non-Monetary</u>	
Vacation	30 days
Holiday	9 days

Total Compensation \$210,617

STATE OF COLORADO)
)
COUNTY OF LARIMER) ss.
)
CITY OF FORT COLLINS)

**OATH OF CARRIE MINEART DAGGETT
AS CITY ATTORNEY**

I, CARRIE MINEART DAGGETT, do solemnly swear that I will support the Constitution and the laws of the United States and the State of Colorado and the Charter and Ordinances of Fort Collins; and that I will faithfully perform the duties of my office or employment, so help me God.

Subscribed and sworn to before me this 17th day of March, A.D. 2015.

City Clerk

CITY ATTORNEY APPOINTMENT AND SALARY

March 17, 2015

**Second Reading Ordinance No. 039, 2015
Resolution 2015-036**

Recruitment / Selection Overview

- National search began October 2014
- 23 Applicants
 - 9 Considered
 - 3 Finalists interviewed
- Stakeholder Engagement
- Council, Community, Staff interviews
- Backgrounds / References

- Council identified Carrie Daggett, Interim City Attorney, as leading candidate – Feb 17, 2015

City Attorney Salary & Employment Agreement

- Ordinance No. 039, 2015, Setting the salary of the City Attorney
 - 1st reading March 3, 2015
 - 2015 annual salary = \$177,000

Market Data – October 2014

Market	Average Annual Salary	Average Total Comp
Colorado	\$179,831	\$204,742
National Western Region	\$184,098	\$219,063

Prepared by Human Resources

March 7, 2015

City Attorney Compensation Calculator

2015

<u>Monetary</u>	
Base Salary	177,000
Medical Insurance	8,940
Dental Insurance	540
Life Insurance	310
Long Term Disability	818
ICMA 457	5,310
ICMA 401	17,700
<u>Non-Monetary</u>	
Vacation	30 days
Holiday	9 days

Total Compensation **\$210,617**

RESOLUTION 2015-036
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPOINTING CARRIE DAGGETT AS CITY ATTORNEY AND
APPROVING THE CITY ATTORNEY'S EMPLOYMENT AGREEMENT

WHEREAS, pursuant to Article VI, Section 1 of the City Charter, the City Council is responsible for appointing the City Attorney; and

WHEREAS, on February 17, 2015, the City Council appointed the Mayor and Mayor Pro Tem to negotiate the terms and conditions of an employment agreement with Carrie Daggett; and

WHEREAS, the two City Councilmembers and Ms. Daggett have been able to reach consensus about the terms and conditions of an employment agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Carrie Daggett, currently interim City Attorney, is appointed City Attorney.

Section 2. That the City Attorney's Employment Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved by the City Council, and the Mayor is hereby authorized to execute the City Attorney's Employment Agreement in substantially the form shown on Exhibit "A" with such modifications, if any, as the Mayor may, upon consultation with the City Manager and Mayor Pro Tem, consider to be in the best interests of the City.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 17th day of March, A.D. 2015.

Mayor

ATTEST:

City Clerk

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of March, 2015, by and between the CITY OF FORT COLLINS, State of Colorado, a municipal corporation, hereinafter referred to as the “City,” and Carrie M. Daggett, hereinafter referred to as the “Employee.”

WITNESSETH:

WHEREAS, pursuant to Article VI of the Charter of the City of Fort Collins, the City Council (the “Council”) is required to appoint a City Attorney and establish the compensation for the City Attorney; and

WHEREAS, the City desires to employ the services of the Employee as City Attorney of the City of Fort Collins as provided by the Charter of the City; and

WHEREAS, it is further the desire of the Council to provide certain benefits, establish certain conditions of employment and set working conditions of employment and set working conditions of the Employee; and

WHEREAS, it is the desire of the Council to: (1) secure and retain the services of the Employee and to provide inducement for her to remain in such employment; (2) to make possible full work productivity by assuring the Employee’s morale and peace of mind with respect to future security; and (3) to provide a just means for terminating the Employee’s services at such time as she may be unable to fully discharge her duties due to disability or when either she or the City may otherwise desire to terminate her employment; and

WHEREAS, the Employee desires to accept employment as the City Attorney of the City upon the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and the parties agree as follows:

SECTION 1. DUTIES.

The City hereby agrees to employ the Employee as the City Attorney of the City, to perform the functions and duties specified in the Charter and ordinances of the City and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

SECTION 2. TERM OF AGREEMENT AND RENEWAL.

A. The term of this Agreement shall be an “indefinite term.” For purposes of this Agreement, “indefinite” shall be deemed to mean “having no exact limits.”

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to remove the Employee from the position of City Attorney and terminate her employment with the City under this Agreement at any time, or the right of the Employee to resign from her employment at any time, subject only to the provisions set forth in Section 5 below

SECTION 3. SALARY

A. The City agrees to pay the Employee for her services rendered pursuant hereto and annual base salary of ONE HUNDRED AND SEVENTY SEVEN THOUSAND DOLLARS (\$177,000), payable in equal biweekly installments at the same time and in the same manner as other employees of the City are paid, with said rate of pay to become effective as of March 30, 2015, to be adjusted in the future as set forth in Section 5(B).

B. A salary review shall take place in November or December of each year, with any subsequent modification of the Employee's salary to be approved by the Council by ordinance and thereafter incorporated herein by this reference without the necessity of further modification of this Agreement by addendum.

SECTION 4. HOURS OF WORK.

A. The normal office hours of the Employee shall be considered to be 8:00 A.M. to 5:00 P.M., Monday through Friday. It is recognized, however, that the Employee must devote a considerable amount of time to the business of the City outside of those normal office hours. For that reason the Employee shall be permitted to take compensatory time off as she shall deem appropriate during said normal office hours.

B. The Employee shall not maintain a private legal practice, nor shall the Employee provide legal representation to any party other than the City without the express prior approval of the Council.

SECTION 5. TERMINATION AND SEVERANCE PAY.

A. The parties acknowledge that the employee serves at the pleasure of the City Council under Article VI, Section 1 of the City Charter. As such, the Employee's term of employment may be terminated at any time by the affirmative vote of a majority of the Council, with or without cause. For the purposes of this Section, the word "cause" shall mean (1) failure of the Employee to carry out her duties under this Agreement after written notice from the Council; (2) failure of the Employee to desist from any act or omission believed by the Council to be contrary to the best interests of the City after written notice to the Employee to desist; (3) conviction of a felony or a crime of moral turpitude; (4) dishonesty towards, fraud upon, or deliberate injury or attempted injury to

the City; (5) the breach by the Employee of a term or condition of this Agreement; (6) any physical or mental disability that substantially limits a major life function of the Employee and that results in her inability to carry out any essential function of her job as City Attorney, with or without reasonable accommodations by the City, provided that the Employee's disability entitles her to receive benefits under the City's long term disability plan or, if the disability is the result of a work-related injury, entitles her to benefits under the Colorado workers' compensation laws for being permanently and totally disabled.

B. In the event that the Employee is removed from her position as City Attorney by the Council for cause as described in subparagraph A. above, the Employee shall not be entitled to receive any further compensation from the City accruing after the effective date of her termination. Similarly, in the event that the Employee voluntarily resigns from her employment with the City under this Agreement, the Employee shall not be entitled to receive any such further compensation. Under either such circumstance, however, the Employee shall be entitled to receive from the City all compensation and benefits that have accrued to her under this Agreement through the last day of her employment with the City.

C. In the event that the Employee is removed from her position as City Attorney by the Council for any reason other than for cause as defined in subparagraph A. above, the City shall, as severance pay, continue to pay the Employee her then-current salary on a bi-weekly basis as follows:

- (1) If removed during the first thirty-six (36) months after March 30, 2015 (the "Initial Period"), for a period of six (6) months from the effective date of her removal;
- (2) If removed during the successive twenty-four (24) months after the Initial Period (the "Second Period"), for a period of five (5) months from the effective date of her removal;
- (3) If removed during the successive twenty-four (24) months after the Second Period (the "Third Period"), for a period of four (4) months from the effective date of her removal; and
- (4) If removed at any time after the Third Period, for a period of three (3) months from the effective date of her removal.

D. In the event that the City at any time during the term of this Agreement reduces the salary or other financial benefits of the Employee in a greater percentage than is applicable to an across-the-board reduction for all employees of the City, or in the event that the City refuses, following written notice, to comply with any other provision benefitting the Employee herein, or the Employee resigns following written notice from

the Council of termination other than for cause as described in subparagraph A. above, then the Employee may, at her option, be deemed to have been terminated by the Council without cause for the purposes of this Section in which event the Employee shall be entitled to the severance pay provided for above.

E. Whether the Employee voluntarily resigns from her position as City Attorney under this Agreement or is removed from her position by the Council with or without cause, Employee shall retain all rights and benefits that may have accrued to her under any of the benefit, pension, or deferred compensation plans provided to her under this Agreement and that she is entitled to retain in accordance with the provisions of such plans and applicable law as any City employee who has resigned or been terminated from employment with the City would be entitled to retain.

F. Medical insurance shall be provided through the end of the month in which the termination occurs. The Employee may elect to thereafter continue coverage by paying the premium in effect at the time of termination under the same terms and conditions and according to the same provisions of law which are applicable to all employees of the City who, upon termination, elect to continue medical coverage at their own expense.

SECTION 6. VACATION.

A. The Employee shall be granted thirty (30) days of annual vacation leave, commencing as of March 30, 2015. Five (5) days of such vacation leave shall be credited to the Employee as of the first full pay period of each year. The remaining balance of twenty-five (25) days of annual vacation leave shall accrue throughout the remainder of each such calendar year pro-rated on a biweekly basis. Notwithstanding any City policy to the contrary, vacation leave accrued and unused by the Employee shall be subject to the following terms and conditions:

(1) At any time during the term of this Agreement, but not more than twice annually, the Employee may elect to receive the cash equivalent of a portion of her accrued, unused vacation, based upon her then current rate of pay; provided, however, that no more than one hundred twenty (120) hours of accrued, unused vacation leave may be converted to a cash payment in any given calendar year. The amount of said payment shall be based upon the Employee's current rate of pay at the time of conversion. To the extent permitted by law, Employee shall be entitled to direct that any such payment be deposited into the City's 457 deferred compensation plan through ICMA-RC or its 401A qualified retirement plan, or such other qualified retirement plan as Employee may designate.

(2) At the end of each calendar year, the balance of the Employee's accrued, unused vacation leave remaining after any such cash conversion shall be carried

over to subsequent years, up to a maximum accrual of 780 hours. Any balance in excess of 780 hours that exists as of the last day of the final pay period of the calendar year shall be forfeited by the Employee. For the purpose of this provision, the “final pay period of the calendar year” shall mean the last pay period that begins in such year.

(3) Upon the cessation of the Employee’s employment with the City, whether by termination, death, disability, resignation or otherwise, the Employee shall be compensated by cash payment for the total amount of her accrued, unused vacation leave balance. The amount of said payment shall be based upon the Employee’s then current rate of pay. Any payment made to the Employee by the City under this provision shall be in addition to any amounts previously paid for accrued, unused vacation leave under subparagraph (2) above and any other amounts payable to the Employee under this Agreement. To the extent permitted by law, Employee shall be entitled to direct that any such payment be deposited into the City’s 457 deferred compensation plan through ICMA-RC or its 401A qualified retirement plan, or such other qualified retirement plan as Employee may designate.

B. The parties acknowledge that Employee has accrued, or reasonably expects to accrue, a significant balance of vacation during the 2015 calendar year, in light of position vacancies in the City Attorney’s Office and extraordinary interim and transitional demands on her time. Accordingly, Employee may elect at any time during 2015 to receive a one-time payment of the cash equivalent of up to an additional one hundred and twenty (120) hours of accrued, unused vacation, in addition to that amount available to her pursuant to Section 6(A). The amount of said payment shall be based upon the Employee’s 2015 rate of pay as interim City Attorney. To the extent permitted by law, Employee shall be entitled to direct that any such payment be deposited into the City’s 457 deferred compensation plan through ICMA-RC or its 401A qualified retirement plan, or such other qualified retirement plan as Employee may designate.

SECTION 7. DISABILITY

If the Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury or mental incapacity or health for a period of four successive weeks beyond any accrued sick leave and short term disability leave, the City shall have the option to terminate this Agreement, subject to the notice and severance pay requirements of Section 5(A). However, the Employee shall be compensated for any accrued vacation or unused holiday leave, and further compensated as a disabled employee pursuant to the provisions of the City’s Long Term Disability Insurance Plan.

SECTION 8. PENSION AND DEFERRED COMPENSATION BENEFITS

A. The City agrees to execute all necessary agreements provided by the International City Management Association Retirement Corporation (hereinafter referred to as "ICMA-RC") for Employee's participation in ICMA-RC's 401A qualified retirement plan, and, in addition to the base salary paid by the City to Employee, the City agrees to pay on Employee's behalf an amount equal to ten percent (10%) of Employee's base salary into such qualified retirement plan, in equally proportioned amounts each pay period, and further agrees to roll over into another qualified retirement plan or to transfer Employee's ownership in the plan to her succeeding employer's qualified plan upon Employee's resignation or termination, to the extent such a rollover or transfer is allowed by law and the terms of the City's plan. In addition, Employee is eligible to participate in the City's 457 deferred compensation plan through ICMA-RC. If Employee does so participate, the City will match Employee's contribution to the plan in an amount not to exceed three percent (3%) of Employee's salary in any one pay period. The total contribution to ICMA-RC's 457 deferred compensation plan is subject to the limits prescribed by the Internal Revenue Service.

SECTION 9. DISABILITY, HEALTH AND LIFE INSURANCE.

The City will provide and offer to Employee and her qualified dependents the same insurance benefit packages and plans it provides and offers to all full-time unclassified management employees of the City, which benefit packages and plans currently include, without limitation, group life, accidental death and dismemberment insurance; long-term disability insurance; dental reimbursement plan; dental insurance; vision insurance; and major medical insurance.

SECTION 10. DUES AND SUBSCRIPTIONS.

The City agrees to budget and to pay for the professional dues and subscriptions of the Employee necessary for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement, and for the good of the City.

SECTION 11. ATTENDANCE AT CONFERENCES, MEETINGS AND SEMINARS.

A. The City hereby agrees to budget for and to pay the travel and subsistence expenses incurred by the Employee in attending meetings and conferences incidental to the performance of the Employee's duties and necessary for the continued professional development of the Employee, including but not limited to attendance at the semi-annual Colorado Municipal League Conferences, Colorado Bar Association and American Bar

Association conferences, meetings and events, and such other professional conferences and meetings as the Employee may reasonably consider beneficial and appropriate.

B. The City also agrees to budget and to pay for the travel and subsistence expenses of the Employee for short courses, institutes and seminars that are necessary for her professional development and certification and for the good of the City.

C. All payment of travel and seminar expenses shall be in accordance with policies relating to the same adopted by the Council from time to time.

SECTION 12. CONTINGENCIES.

A. This Agreement is hereby made expressly contingent upon the City Council of the City of Fort Collins (the "Council") approving the salary of the Employee by its final adoption of a related ordinance, in its discretion, on or before March 17, 2015. If the Council does not pass such an ordinance on second reading on or before that date then this Agreement shall be automatically terminated and all parties shall be released from all obligations hereunder.

B. If, however, the Council does pass such an ordinance on or before March 17, 2015, but within ten (10) days of the passage of the ordinance a notice of protest against the ordinance is filed with the City Clerk of the City of Fort Collins pursuant to Section 2(b) of Article X of the Charter of the City of Fort Collins, then this Agreement shall remain in full force and effect until either the Council repeals the ordinance or the electors vote to repeal the ordinance in accordance with Section 2(c) of Article X of the Charter of the City of Fort Collins. In the event the ordinance is repealed by Council or by the electors, then the parties agree to re-negotiate the terms and conditions of an employment agreement.

C. If the Council does not repeal the ordinance and if the electors approve the ordinance, then this Agreement shall remain in effect.

SECTION 13. ANNUAL APPROPRIATION.

All financial obligations of the City under this Agreement shall be subject to the Council's annual appropriation of the funds necessary to satisfy such obligations.

SECTION 14. INDEMNIFICATION.

The City shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, and any professional licensing or other administrative proceeding or action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Attorney. The City may compromise and settle any such claim or suit and

pay the amount of any settlement or judgment rendered thereon, provided that no judgment or admission of wrongdoing shall be agreed to by the City without the Employee's written consent.

SECTION 15. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The Council, in consultation with the Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the Employee, provided that such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits (including, without limitation, health and life insurance programs, social security, and disability benefits, if any), reimbursement for employment-related expenses incurred by Employee, working conditions as they now exist or hereafter may be amended and provisions governing accrual and payment for vacation and floating holidays upon termination of employment, also shall apply to the Employee as they would to department heads and service directors of the City, unless said benefits are specifically provided for herein.

SECTION 16. NOTICES.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Services, postage prepaid, addressed as follows:

EMPLOYER: Mayor
City of Fort Collins
P. O. Box 580
Fort Collins, CO 80522

EMPLOYEE: Carrie M. Daggett
City Attorney
P.O. Box 580
Fort Collins, CO 80522

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 17. GENERAL PROVISIONS.

A. It is the intent of the parties that this Agreement and the appointment of the Employee as City Attorney be, in all aspects, in accordance with the requirements and provisions of the City's Charter relating to such position. If any provision of this Agreement is capable of two (2) constructions, only one (1) of which complies with the Charter, the construction that complies with the Charter shall control. If any provision of the Agreement conflicts with the Charter, the Charter shall control and the conflicting provision of this Agreement shall be of no effect. In the latter event, an invalid provision of this Agreement shall not affect the other provisions of the Agreement, it being the intent of the parties that the provisions of this Agreement shall be severable.

B. The text herein shall constitute the entire Agreement between the parties.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.

D. This Agreement shall become effective commencing _____, 2015.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF FORT COLLINS
a municipal corporation

By: _____
Karen Weitkunat, Mayor

ATTEST:

City Clerk

Carrie M. Daggett

ORDINANCE NO. 039, 2015
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 2-581 OF THE CODE
OF THE CITY OF FORT COLLINS AND
SETTING THE SALARY OF THE CITY ATTORNEY

WHEREAS, pursuant to Article VI, Section 1 of the City Charter, the City Council is responsible for fixing the compensation of the City Attorney; and

WHEREAS, the City is committed to compensating its employees in a manner which is fair, competitive and understandable; and

WHEREAS, the City's pay philosophy is based on total compensation, which includes not only base salary but also deferred compensation payments, vacation and holiday leave, and amounts paid by the City for medical, dental, life and long-term disability insurance; and

WHEREAS, members of the City Council and the City Attorney have discussed terms and conditions of the City Attorney's employment, including the base salary to be paid to the City Attorney; and

WHEREAS, the City Council supports a compensation philosophy of paying employees a competitive salary based on established market data, and is adjusting the salary of the City Attorney to bring that salary more in line with the appropriate market data; and

WHEREAS, the City Council believes that the base salary of the City Attorney should be established at the amount of \$177,000 per annum.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 2-581 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-581. Salary of the City Attorney.

The base salary to be paid the City Attorney shall be on hundred seventy-seven thousand dollars (\$177,000.) per annum, payable in biweekly installments. Sixty (60) percent of such sum shall be charged to general government expense, twenty (20) percent to the City water utility and twenty (20) percent to the City electric utility.

Section 2. That the effective date of the salary adjustment shall be March 30, 2015.

Introduced, considered favorably on first reading, and ordered published this 3rd day of March, A.D. 2015, and to be presented for final passage on the 17th day of March, A.D. 2015.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 17th day of March, A.D. 2015.

Mayor

ATTEST:

City Clerk