



City of Avondale

City Council Meeting

Monday, March 18, 2019

Mayor and Council

Kenn Weise, Mayor

Pat Dennis, Vice Mayor

Tina Conde, Council Member | Bryan Kilgore, Council Member

Veronica Malone, Council Member | Curtis Nielson, Council Member

Mike Pineda, Council Member

Administration

Charles A. Montoya, City Manager

Gina Montes, Assistant City Manager

Andrew McGuire, City Attorney

Marcella Carrillo, City Clerk

City Council Chambers

11465 West Civic Center Drive

Avondale, AZ 85323



City Council Meeting Agenda Monday, March 18, 2019

CITY COUNCIL CHAMBERS | 11465 WEST CIVIC CENTER DRIVE | AVONDALE, AZ 85323

SPECIAL MEETING 6:00 PM

CALL TO ORDER BY MAYOR

1. ROLL CALL BY THE CITY CLERK

2. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. APPOINTMENT OF CITY ATTORNEY

City Council will consider a request to adopt Resolution 3527-319, appointing Michael S. Wawro, as the City Attorney of the City of Avondale, Arizona, approving the Employment Agreement with Michael S. Wawro, and authorizing the Mayor, City Manager, City Clerk, and current City Attorney to execute the necessary documents. The Council will take the appropriate action.

3. SWEARING IN OF NEW CITY ATTORNEY, MICHAEL S. WAWRO

4. ADJOURNMENT

Council Members of the City of Avondale will attend either in person or by telephone conference call.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica.

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.



CITY COUNCIL REPORT

SUBJECT: Appointment of City Attorney

MEETING DATE: 3/18/2019

TO: Mayor and Council

FROM: Marcella Carrillo, City Clerk, (623) 333-1214

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Resolution 3527-319, appointing Michael Wawro, as the City Attorney of the City of Avondale, Arizona, approving the Employment Agreement with Michael Wawro, and authorizing the Mayor, City Manager, City Clerk, and current City Attorney to execute the necessary documents. The Council will take the appropriate action.

DISCUSSION:

The Purpose of this agenda item is to request Council approval of the Employment Agreement with Michael Wawro for the appointment of City Attorney in accordance with the direction made by the City Council at the March 6, 2019 City Council Meeting.

BUDGET IMPACT:

City Council approved the use of General Fund contingency to begin the process of transitioning from contracted legal services to an in-house legal department on February 19, 2019.

RECOMMENDATION:

Staff recommends approval of the proposed Employment Agreement with Michael Wawro and the appointment as the new City Attorney.

RESOLUTION NO. 3527-319

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPOINTING MICHAEL S. WAWRO AS THE CITY ATTORNEY AND APPROVING AN EMPLOYMENT AGREEMENT WITH MICHAEL S. WAWRO.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. Pursuant to the Avondale City Charter, Michael S. Wawro is hereby appointed as City Attorney of the City of Avondale, Arizona, effective March 31, 2019.

SECTION 2. The Employment Agreement with Michael S. Wawro regarding the hiring as the City Attorney is hereby approved substantially in the form and substance attached hereto as Exhibit A.

SECTION 3. The Mayor, the City Manager, the City Clerk, and the current City Attorney are hereby authorized and directed to cause the execution of the Employment Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

SECTION 4. The City Council further directs the City Manager to take all necessary action regarding and related to the hiring for the position of the City Attorney.

SECTION 5. The City Council further directs the City Manager and the current City Attorney to begin the transition of legal services to the City of Avondale on a timeline that accommodates the City's needs and the new City Attorney's schedule.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, on March 18, 2019.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Susan Segal, Attorney for the City

EXHIBIT A
TO
RESOLUTION NO. 3527-319

[Employment Agreement]

See following Pages.

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into on March 18th, 2019 ("the Effective Date") by and between the City of Avondale, an Arizona municipal corporation ("the City") and Michael S. Wawro ("the Employee"). The City and the Employee are sometimes collectively referred to below as "the Parties."

RECITALS

- A. The City desires to employ the Employee as the City Attorney, as provided in the Avondale City Charter ("the Charter").
- B. The Council of the City of Avondale ("the City Council") desires to provide the Employee with certain benefits and to establish certain conditions of employment for the Employee, as set forth in this Agreement.
- C. The Employee desires to accept employment with the City as the City Attorney.
- D. The Parties agree and desire to work together and in good faith to fulfill the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the foregoing recitals, which are incorporated into this Agreement, the mutual covenants set forth below, and other good and valuable consideration, the sufficiency and receipt of which the Parties mutually acknowledge, the Parties agree to the following terms and conditions:

1. Duties. The Employee shall perform the functions and duties specified for the City Attorney in the City Charter and shall perform other legally-permissible and proper duties and functions as the City Manager and the City Council shall assign from time to time, subject to compliance with federal, state, and local law and the Arizona Rules of Professional Conduct set forth in the Rules of the Arizona Supreme Court. At all times, the Employee shall be licensed to practice law in the State of Arizona and shall be in good standing under the rules of the Arizona Supreme Court. The Employee shall not be reassigned from the position of the City Attorney to another position within the City without the Employee's consent.

2. Term. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the City or the Employee terminates this Agreement, as set forth in Section 3 below; provided, however, that the Employee shall not be required to report for work and shall not receive the benefits of this Agreement until

March 31, 2019 (“the Start Date”). During the term of this Agreement, the Employee shall be in the exclusive employ of the City and shall not accept other employment or carry out any other business except that of the position of the City Attorney. The term “employment” shall not be construed to include occasional teaching, serving as an adjunct faculty member at a college or university, writing, consulting, presenting at professional seminars, conferences, as Judge Pro Tem (not in the City of Avondale), other meetings, and related activities for compensation performed outside the Employee’s normal work hours with the City and without the use of the City’s resources or facilities.

3. Termination. The City may terminate this Agreement, with or without cause and at any time, by an affirmative vote of the majority of the City Council, subject only to the severance provisions set forth in Subsection 3.1 below. The Employee may terminate this Agreement at any time, with or without cause, upon not less than 30 calendar days’ notice to the City Council.

3.1. Severance With Cause. If the City Council terminates this Agreement with cause, the City shall not be required to pay any severance to the Employee. For the purposes of this Agreement, the phrase “with cause” means that the City Council, at a duly posted public meeting, has determined that the Employee has: (a) committed an act of gross insubordination by refusing to a legal, valid action that is within the scope of his employment and when specifically directed to do so by a majority of the City Council or the City Manager; (b) has been incarcerated or charged with a felony, as defined in Arizona Revised Statutes (the City Council may, but is not obligated, choose to suspend the Employee with pay during the pendency of any such prosecution); (c) either in the Employee’s personal or professional capacity, severely damaged the reputation of the City or the City Council; (d) materially failed to perform a significant portion of the Employee’s duties as the City Attorney as set forth in this Agreement; (e) is not licensed to practice law in the State of Arizona or is not in good standing under the rules of the Arizona Supreme Court; or (f) causes or allowed any practice, activity, decision, or organizational circumstance that is illegal, immoral, imprudent, or in violation of the City Charter, any City code or ordinance, or any Arizona state or federal law.

3.2. Severance Without Cause.

A. If the City Council terminates the Employee’s employment without cause and during such time that the Employee is willing and able to fulfill the duties as of the City Attorney under this Agreement, the City agrees to pay the Employee a lump sum payment (or, at the Employee’s option, in installments) in cash equal to Six (6) months’ aggregate salary and emoluments, including, without limitation, full payment for health insurance, life insurance, sick leave, vacation leave, short and long term disability insurance, and retirement benefits. Beginning after the Employee’s fifth year of consecutive employment with the City, such severance amount shall be increased by one month for each completed year of service to the City, up to a maximum of 12 months. Payment of such severance shall be contingent upon:

(1) The Employee executes a severance agreement acceptable to both Parties, which shall include the Employee's: (a) full release of the City and all its agents and employees from any and all claims, including, but not limited to, demands, damages, causes of action, or liability arising out of the Employee's employment or termination of employment with the City; (b) agreement not to initiate or cause to be initiated under any lawsuit, claim, grievance proceeding, or investigation of any kind, under and contract, law, or regulation, pertaining to the Employee's employment with the City; and (c) acknowledgment that the City will only provide a neutral reference for the Employee, but may be required to disclose any and all records related to the Employee's termination pursuant to a valid request for public records; and

(2) The Employee makes himself reasonably available as needed by the City for consulting purposes for a period of time equal to the number of months of severance paid to the Employee.

B. It shall be deemed severance without cause if, at any time during the term of this Agreement the City Council: (i) reduces the Employee's salary or other financial benefits in a greater percentage than an applicable across-the-board reduction for all the City's employees; or (ii) refuses to comply with a material terms of this Agreement within 30 days after written notice from the Employee.

C. If the Employee's employment is terminated pursuant to this Subsection 3.2, all fringe benefits furnished by the City shall terminate on the date of the termination of this Agreement.

3.3. Voluntary Resignation. In the event the Employee voluntarily terminates this Agreement in accordance with this Section 3, the Employee shall not be entitled to severance pay.

3.4. Reductions in Pay or Benefits. In the event the City, at any time during the terms of this Agreement, reduces the Employee's salary or other financial benefits in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the City refuses, following written notice and opportunity to cure, to comply with any provision herein or to provide any benefit to the Employee required hereunder, the Employee may, at the Employee's option, be deemed "terminated" (within the meaning of the severance provisions) at expiration of the applicable Cure Period (as defined in Section 15 below). The Employee's entitlement to the severance provisions of this Agreement shall only arise if, in fact, the Employee's employment terminates.

3.5. Forced Resignation. In the event of a suggestion, either formal or informal by one or more members of the City Council, including the Mayor, that the Employee resign, the Employee may require that the Mayor, the City Council, and the Employee meet and discuss the matter to try and resolve any disagreement or misunderstanding that led to the suggestion of resignation, subject to compliance with Arizona's Open Meeting Law and other applicable laws. If the Employee resigns

following an offer to accept resignation by a majority of the City Council, whether formal or informal, the Employee may declare a termination as of the date of the acceptance of his resignation.

4. Suspension. If the City Council has made a determination that “for cause” termination is appropriate, as set forth in Section 3 above, the City Council may, in its sole discretion, as an alternative to termination, suspend the Employee with or without pay for a period of up to 30 days.

5. Disability. If the Employee is permanently disabled or is otherwise unable to fulfill the duties of the City Attorney due to sickness, accident, injury, health, or mental incapacity for a period of four consecutive weeks beyond any accrued sick leave, or a minimum of 12 weeks as defined under the Family Medical Leave Act of 1993 (FMLA) should said accrued sick leave be less than 12 weeks, the City shall have the option to terminate this Agreement; provided, however, the City shall pay the full amount of severance pay set forth in Section 3 above. The Employee shall, during such disability event, continue to accrue vacation leave and sick leave and receive holiday compensation benefits. The City shall not unreasonably exercise a termination due to disability.

6. Compensation.

6.1. Salary. The City agrees to pay the Employee a base salary of \$170,000.00 annually for services rendered pursuant to this Agreement, payable in installments at the same time as other employees of the City are paid. In the event the Employee has met or exceeded the City Council’s expectations during any fiscal year under this Agreement, as determined according to the performance evaluation criteria set forth in Section 7 below, the Employee’s base salary shall be increased in each fiscal year (beginning FY 2020-2021) by the same percentage amount approved by the City Council for other employees of the City as a merit, market adjustment and/or cost of living increase, if any, as part of the City’s annual budget.

6.2. Disability, Health, and Life Insurance. The City agrees to provide life, accident, sickness, short and long term disability income benefits, major medical, hospitalization, surgical and comprehensive medical insurance, workers compensation, and FMLA benefits in the same manner and at the same benefit level as is generally provided to all the City employees. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads or general employees of the City, as provided by the City’s policies, the City Charter, ordinances, personnel rules and regulations, or other practices.

6.3. Retirement and Deferred Compensation.

A. Arizona State Retirement System (ASRS). Wawro is presently enrolled in the Arizona State Retirement system and shall continue to

receive the same benefits and make the same contributions as other enrolled members.

6.4. Cellular Telephone Stipend. The City shall pay the Employee a monthly cell phone stipend consistent with other management employees of the City and according to the current City of Avondale Policy and Procedure Manual and/or Administrative Policies.

6.5. Automobile Stipend. The City shall pay the Employee \$350.00 per month as an automobile stipend.

6.6. Vacation, Sick and Military Leave. The Employee shall accrue vacation and sick leave in accordance with the City of Avondale's Policy and Procedure Manual as applicable to department-director-level and above employees; provided, however, the Employee shall be credited with three weeks of vacation leave and two weeks of sick leave, which shall be available on the first to occur of the Start Date or the day the Employee reports for duty as set forth in Section 2 above. The Employee shall also receive a holiday bank of hours in accordance with the City of Avondale's Policy and Procedures Manual. The Employee shall be compensated for unused vacation and sick leave upon termination according to the provisions of the City of Avondale's Policy and Procedure Manual relating thereto, unless otherwise specified in this Agreement.

6.7. Technology Incentive. The City shall pay the Employee a one-time technology incentive in the amount of \$500.00 to reimburse the Employee for the cost to purchase a tablet device for City business use. Such reimbursement shall only be paid if the tablet device is purchased from a retail location in the City of Avondale.

7. Performance Evaluation. Commencing in the 2020-2021 fiscal year, the City Council shall annually review and evaluate the Employee's performance as far in advance of the adoption of the annual operating budget as practicably, but not later than April 30. The Employee's review and evaluation shall be based upon the following: (i) success at fulfilling the reasonably achievable goals and performance objectives set forth by the City Council in its annual goal-setting retreat; (ii) personnel management, including overall management style and ability to lead and direct staff and ability to supervise others; (iii) obtainment of additional, reasonably achievable policy objectives and goals as set forth by a majority of the City Council at a public meeting; provided, however, that such goals and objectives are generally obtainable within the time allowed and within the limitations of the annual budget; and (iv) professionalism, including manner of addressing the City Council and City employees, preparation for and participation in City Council meetings, and other related issues.

8. Hours of Work. The City Council recognizes that the Employee is a salaried employee and must devote a great deal of time beyond the normal office hours to

business of the City and, to that end, the Employee will be allowed to take reasonable time off as the Employee shall deem appropriate during normal office hours.

9. Dues and Subscriptions. The City agrees to budget for and to pay the Employee's professional dues and subscriptions necessary for the Employee's continuation and full participation in national, regional, state, and local professional associations and organizations, of which the Employee is currently a member or is expected to become a member because of the position as the City Attorney, and for other suitable and desirable expenses for the Employee's continued professional participation, growth, and advancement, and for the good of the City, as the City Council deems appropriate. This benefit shall not be included as a portion of any Severance Pay under Section 3 above.

10. Professional Development.

10.1. Professional Associations. The City agrees to budget and to pay the Employee's travel, conference registration, and subsistence expenses for professional and office travel, meetings, and related occasions adequate to continue the Employee's professional development, and pursuit of necessary official and other functions on behalf of the City. This benefit shall not be included as a portion of any Severance Pay under Section 3 above.

10.2. Continuing Education. The City also agrees to budget and to pay the Employee's reasonable travel, registration, and subsistence expenses for short courses, institutes, and seminary necessary for the Employee's professional development and continuing legal education requirement. This benefit shall not be included as a portion of any Severance Pay under Section 3 above.

11. Expenses.

11.1. General Expenses. The City: (a) recognizes that the Employee will periodically incur certain expenses of a non-personal and generally job-affiliated nature, (b) agrees to reimburse or to pay these general expenses, and (c) authorizes the Finance and Budget Director, or authorized designee, to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statement, or personal affidavits.

12. Civic Club Membership. The City recognizes the desirability of representation in and before local civic and other organizations. The Employee is therefore authorized to become a member of such civic clubs or organizations that the City Council approves and that the City Council deems necessary. If approved, the City shall pay all associated expenses. The Employee shall report to the City on each membership that the Employee has taken out at the City's expense.

13. Indemnification. In addition to any obligations set forth under state or local law, the City shall defend, save harmless, and indemnify the Employee from and

against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as prescribed by the City Charter or separate directions from the City Council.

14. Bonding. The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

15. Default; Cure. Failure or unreasonably delay by the Employee or the City to perform otherwise act in accordance with any term or provision of this Agreement shall constitute a breach of this Agreement and, if the breach is not cured within 30 days after written notice from the other Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply, so long as the party commences performance or compliance within 15 days after written notice and diligently proceeds to complete such performance or fulfill such obligation (the "Cure Period"); provided, further, that no such Cure Period shall exceed 90 days, unless otherwise agreed to, in writing, by the Parties. Any notice of a breach shall specify the nature of the alleged breach and the manner in which the breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies that are available under law or equity.

16. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and be deemed to have been duly given if: (i) delivered to the Party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service to the address set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive, Suite 220
Avondale, Arizona 85323-6809
Attn: Mayor

With a copy to: City of Avondale
11465 West Civic Center Drive, Suite 220
Avondale, Arizona 85323-6809
Attn: City Manager

If to the Employee: Michael S. Wawro


or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly give pursuant to this Section. Notices shall be

deemed received (i) when delivered to the Party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Employee of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

18. Attorneys' Fees. In the event either Party finds it necessary to bring any action at law or other proceeding against the other Party to enforce any of the terms, covenants, or conditions hereof, or by reason of any breach or default hereunder, the Party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other Party and, in the event any judgment is secured by said prevailing Party, all such costs and attorneys' fees shall be included therein, such fees to be set by the Court and not a jury.

19. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

20. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

21. Time of the Essence. Time is of the essence in this Agreement.

22. Assignment. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party.

23. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

24. Amendment. No amendment or waiver of any provision in this Agreement will be binding (i) on the City unless and until it has been approved by the City Council and has become effective, or (ii) on the Employee unless and until it has been executed by the Employee or the Employee's authorized representative.

25. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

26. Severability. Every provision in this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the Parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity and unenforceability.

27. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the Parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained. The City and the City Council shall not unreasonably withhold appropriation authority to fund the Employee's salary, benefits, and other provisions of this Agreement.

28. Conflict of Interest. The City may cancel this Agreement pursuant to A.R.S. § 38-511, if applicable.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

EMPLOYEE

CITY OF AVONDALE



Michael S. Wawro

Kenneth N. Weise
Mayor, City of Avondale

ATTEST:

Marcella Carrillo
City Clerk, City of Avondale