

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

DR. ALLEN L. DIERCKS)		
Diercks,)	Case No.	CVCV302775
v.)		
THE CITY OF DAVENPORT, IOWA,)	FINDINGS OF FACT, RULING,	
an Iowa Municipal Corporation,)	AND ORDER OF THE COURT	
THE CITY COUNCIL OF THE)		
CITY OF DAVENPORT, and City)		
Attorney, THOMAS D. WARNER)		

I. Introduction and Summary

Plaintiff, Dr. Allen Diercks, filed his Petition against the City of Davenport and its City council on January 9, 2024, and amended its Petition on February 2, 2025. The Court treats the City of Davenport and its City Council as a single defendant for purposes of this dispute.

Trial in this matter began on May 20, 2025, and concluded May 22, 2025. Attorneys Michael Meloy and John Flynn represented Plaintiff, Dr. Allen Diercks. Attorneys Richard Davidson and Brett Marshall represented the Defendants, City of Davenport and the Davenport City Council. The trial included three days of trial testimony by witnesses, and numerous exhibits. Diercks submitted written closing arguments on June 6, 2025, and the City on June 9, 2025. Diercks filed two post-trial motions with the Court. The Court ruled on both motions. The dispute was fully submitted for final determination by this Court on August 29, 2025.

This Petition stems from the 2023 settlement of employment-related claims against the City of Davenport asserted by former Davenport City Administrator, Corrin (Corri) Spiegel, and two other Davenport City employees, Tiffany Thorndike and Samantha Torres. In the fall of 2023, the City of Davenport paid approximately \$1,900,000 to these three employees in return for written releases from any legal claims arising during their employment with the City.

Diercks asserted numerous legal claims arising out of the three settlements. Generally, Diercks asserted that the City (1) violated Iowa Code Chapter 21(Iowa Open Meetings Act) when the City Council discussed or authorized the employee settlements,

and also (2) violated Iowa Code section 364.3(1) because the City Council did not properly authorize the City Attorney to negotiate and execute the employee settlements. The City denied both claims.

Diercks requested a declaration by the Court find the City violated of these Iowa Code sections. Diercks requested as its remedy that this Court find all three employee settlement agreements are void, i.e., unenforceable pursuant to Iowa Code sections 21.6 (3)(c) and 364.3 (1). Diercks further requested the Court to Order the City to recover from the three former employees the monies the City paid to each of them.

The issues before Court by the Parties represent the intersection of (1) what the public expected the City of Davenport to do when the City resolved these employee claims by the payment of taxpayer dollars, and (2) what the law required the City to do. Specifically, what, where, when and how must local government disclose its monetary settlements to the public (Iowa Open Meetings Act). Further, what action was the City required to take to legally authorize the City Attorney to reach these settlements pursuant to Iowa Code 364.3 (1).

This Court finds that on or before September 8, 2023, the City Council did not authorize City Attorney Tom Warner to negotiate and execute settlement with Tiffany Thorndike and Samantha Torres. The Courts concludes that in failing to do so, the City of Davenport violated Iowa Code section 364.3(1). The Court finds the Thorndike and Spiegel settlement agreements were not authorized by Iowa law and are void. However, based on the legal claims before the Court (Count II - Open Meetings Act and Count III - Declaratory Judgment), Iowa law does not authorize this Court *within this* pending case to order the City to recover the settlement funds. That is not to say that relief is not available in a separate legal proceeding.

This Court also finds that on October 4, 2023, the City in effect authorized Tom Warner to negotiate a settlement with Spiegel. The City did not violate that Iowa Law when it authorized with its agreement with Corrin Spiegel. Therefore, the Spiegel settlement agreement is valid.

Further, the Court further finds and concludes that the City of Davenport did not violate the Iowa Open Meetings Act for any of the three settlements. The optics are poor for the City Council for these closed and open meetings; the public clearly expected more from its City Council. However, the Iowa legislature, not the public, establishes legal standards for conducting local government meetings. Based on the evidence, this Court concludes the City met the minimum legal requirements for its governmental meetings subject to the Open Meetings Act.

II. Procedural History and the Law of the Case

A. Procedural History

The Diercks filed his Petition asserting claims against former Davenport City Attorney, Thomas Warner, the City of Davenport, and its City Council. Diercks asserted three separate theories for relief. Before trial, Tom Warner filed a motion to dismiss and a motion for summary judgment on all Counts against him. The Court dismissed the claims against Tom Warner.

The City and its City Council also sought summary judgment. Before trial, the Court granted the motion for summary judgment on Count I (Writ of Certiorari). The Court denied the motion for Counts II and III.

Counts II (Iowa Open Meetings Act) sought relief, including:

To find that the City of Davenport and the Council violated Chapter 21 of the Iowa Code, the Iowa Open Meetings Act, and

to Order appropriate sanctions pursuant to 21.6(3) of the Act for violations of the Open Meetings Act.

Count III (Declaratory Judgment).

Find that the City of Davenport and the Council violated Iowa Code section 364.2(1) and 364.3(1) of the Iowa Code regarding the sole authority to approve a contract is exercised by a City Council.

Declare that the law was clearly established that these three employee settlement agreements were void, ultra vires, erroneous and unlawful and could not be ratified by the Council on December 13, 2023.

Find that the City of Davenport violated 2.40.020 (L) of the Davenport City Code as to the stipulated settlement limitation of \$50,000 that Warner was allowed to sign without council approval.

B. Law of the case

1. January 30, 2025, Court Ruling Following *in Camera* Review (Judge Cleve).

The Court reviewed audio recordings of the October 4, 2023 (no detailed minutes) closed meeting and also the detailed minutes and audio recordings of the December 13,

2023, executive (closed) sessions.¹ The Court found the content of audio recordings and minutes fell squarely within the attorney-client privilege and are, therefore, those were shielded from disclosure in their entirety.² The Court also found that, “without disclosing the details of the closed sessions, the Court notes that all of the discussions were singularly focused on impending litigation and litigation strategy.”³

2. February 25, 2025, Ruling and Order on Diercks’s 1.904 Motion (Judge Cleve).

Diercks requested Judge Cleve to amend or enlarge his January 30, 2025, Court Ruling based on the belief that the City Council addressed topics that either: (1) were improper for a closed session under 21.5(1)(c); or (2) were outside of the Council’s published agenda.⁴

In response, the Court Ruling and Order on February 25, 2025, stated,

The Court reviewed the sessions and stands by its prior rulings: both meetings in their entirety were focused on imminent or pending litigation. Accordingly, the Court reiterates its determination that the discussions held during the closed sessions are protected by the attorney-client privilege and are not public records, and as such they may not be released.”

The Davenport City Council took no formal vote (on October) to authorize city attorney Tom Warner to settle with the disgruntled employees. However, it is apparent from the audio recording that all council members present assented to the proposed settlements.”⁵

Upon review, the Court finds that the Council intended to ratify the settlement agreements. Therefore, the Court modifies the wording in its earlier order from “The City Council approved the agreements in open session on December 13, 2023,” to “The City Council ratified those (settlement) agreements in open session on December 13, 2023.”⁶

¹ See January 30, 2025, *Ruling and Order*, Page 2.

² See January 30, 2025, *Ruling and Order*, Page 5.

³ *Id.*

⁴ February 25, 2025, *Ruling and Order*, Page 2.

⁵ February 25, 2025, *Ruling and Order*, Page 3

⁶ February 25, 2025, *Ruling and Order*, Page 5

3. March 26, 2025, Ruling and Order Granting, in part and denying in part, City of Davenport's Motion for Summary Judgement (Judge Fowler)

On October 4, 2023, the Davenport City Council held a closed session to discuss imminent and pending litigation.⁷ The Council kept no detailed minutes for the October 4, 2023, closed session.⁸ However, there was an audio recording of that closed session.⁹

The Court found that,

The Court had previously reviewed that session in camera and determined that the contents of the council's discussions are protected by the attorney-client privilege. The Court noted that the council did not take a formal vote at any time during the October 4 meeting, but the council did acquiesce to the settlements. On October 6, 2023, Warner signed a settlement agreement with Spiegel (\$1,600,000.00).¹⁰

On December 13, 2023, the Davenport City Council held an executive session to discuss imminent pending litigation. The Court had previously reviewed that session *in camera* and determined that the contents of the council's discussion are covered by the attorney-client privilege. After the executive session, the council reconvened an open session and voted to ratify all three settlement agreements.¹¹

III. Findings of Facts

A. City Council Meetings

1. October 4, 2023, city council meeting

Brian Krup prepared and posted the agenda for the October 4, 2023, Davenport City Council committee of the whole, revised October 3, 2023, agenda. Item "XIV Executive Session" states, "Litigation pursuant to Iowa Code section 21.5 (1)(c)."¹²

The report/meeting minutes of Davenport City Council committee of the whole on October 4, 2023, included the following entry; "on motion by Alderman Dunn, second by Alderwoman Meginnis and all Alderman present voting aye, council recess to executive

⁷ March 26, 2025, *Ruling and Order*, Page 2.

⁸ March 26, 2025, *Ruling and Order*, Page 7; See also testimony of Tom Warner that he took notes, but did not prepare detailed meeting minutes.

⁹ March 26, 2025, *Ruling and Order*, Page 7.

¹⁰ March 26, 2025, *Ruling and Order* Page 2

¹¹ March 26, 2025, *Ruling and Order*, Page 2.

¹² Defendant's Exhibit F, Tab 1, return 6.

session at 7:53 PM to discuss strategy with counsel on matters involving litigation pursuant to Iowa code section 21.5 (1)(c). On motion by Alderman Dunn, seconded by Alderman Ortiz, council went back into open session and adjourned at 9:07 p.m.”¹³

The Davenport City Council Executive Session Summary for October 4, 2023, stating that, “Council continued in executive session at 7:59 p.m. with all council members present except for Dickman and the others being present were Jason O'Rourke, L&W (Lane and Waterman); Tom Warner. Council went back into open session and adjourned at 9:07 p.m.”¹⁴

2. December 6, 2023, City Council committee of the whole meeting

At the December 6, 2023, City Council Meeting, Davenport resident Dr. Ezra Sidran addressed the Davenport City council during its open session and expressed his opposition to the proposed settlements between the City and with Tiffany Thornidike, Samantha Torres, and Corri Spiegel.¹⁵

3. December 13, 2023, city council meeting

Defendant's Exhibit A is the revised agenda for the December 13, 2023, City Council meeting. The assistant City Clerk, Mr. Krup, posted the revised agenda 24 hours ahead of that meeting. That revised agenda stated on the last page XVI.,

Executive Session. The stated purpose was “(1) To discuss strategy with counsel and matters involving litigation pursuant to Iowa code section 21.5(1) (c).” The remainder of agenda item XVI was “Following the closed session, the City Council may reconvene in open session to consider the ratification of settlement agreements with Corri Spiegel, Tiffany Thorndike, and Samantha Torres.

Mr. Krup prepared the minutes of the City Council meeting for December 13, 2023, that. ¹⁶The City Council approved those minutes on January 10, 2024. Those meeting minutes indicated there was a motion by Alderman McGuinness seconded by Alderman Ortiz to go into executive session. The roll call vote in favor was 8 to 0, as reflected in the vote tally sheet.¹⁷ The tally sheet further reflects that Alderman Lee (phone) and Lynch

¹³ Exhibit F, Tab 2, return 8,

¹⁴ Defendant's Exhibit I.

¹⁵ Defendant's Exhibit E, 1:33:37-1:36:52.

¹⁶ Defendant's Exhibit B

¹⁷ Defendant's Exhibit H.

(stepped out of the room) did not participate in that vote because each was physically absent.

The “Executive Session Summary” form used by the City Council during its closed (executive) session.¹⁸ Then-acting City Attorney Brian Heyer attended and filled out this sheet during the December 13, 2023, executive session, which began at 7:16 p.m. and concluded at 8:42 p.m. Attorney Heyer testified that the City Council discussed nothing other than legal matters involving litigation or where litigation was imminent in that executive session.

That Summary Sheet further reflected that Alderman Jobgen made the motion to go back into open session and Alderman Gripp seconded that motion. The tally sheet reflected the vote of 6 to 1 to go back into open session.¹⁹ Mr. Krup testified the motion to return into open session took place in the City Council chambers. The minutes of the meeting showing the City Council he returned to the open session meeting at 8:42 p.m.²⁰ The meeting minutes reflected that motion and vote are further reflected on the last page of Exhibit B. Alderman Lee, Lynch and Dickman were absent during that vote.

Meeting minutes for item Section “XVI. Executive Session” stated, “. . . Council went back into open session meeting at 8:42 p.m. to consider a motion to ratify settlement agreements with Corey Spiegel, Tiffany Thorndike and Samantha Torres with Mayor Matson and all Alderman present except Alderwoman Dickman, Alderwoman Lee, and Alderwoman Lynch . . .”²¹ Further, “[o]n motion by Alderman Dunn, seconded by Alderman Jobgen and all Alderman present except Alderman Kelly, the following motion passed:

Motion to ratify the settlement agreements with Corey Spiegel, Tiffany Thorndike, and Samantha Torres. PASSED 2023-548.”²²

B. Settlement Agreements

1. Torres and Thorndike settlements

Samantha Torres and Tiffany Thorndike each prepared settlement demand letters dated August 31, 2023.²³ Davenport City Attorney Tom Warner drafted an e-mail to seven

¹⁸ Defendant’s Exhibit J

¹⁹ Defender’s Exhibit H.

²⁰ Defendant’s Exhibit B.

²¹ Exhibit B., Page 11.

²² Defendant’s B, (minutes) Exhibit J (executive summary sheet) and Exhibit H (tally sheet).

²³ Plaintiff’s Exhibit 1 and Exhibit 2.

members of the Davenport City Council dated September 6, 2023.²⁴ That e-mail described the “important terms” for settlement as:

1) they resign and release the city and its elected officials and employees in their official capacities; 2) they receive 12 months of health insurance coverage; 3) Tiffany Thorndike is paid \$157,000; Samantha Torres is paid \$140,500.²⁵

The Warner e-mail further stated,

“the most recent retaliatory action of leaking the information on their status to the media was a very expensive unilateral decision by at least one elected official. Please let me know by 5:00 p.m., Thursday, September 7, 2023, if you object to my proposed offer. Otherwise, I will proceed. I have removed Ald. Condon Lee and Kelly from this e-mail as they are named as offenders in the demand letter.”²⁶

None of the City Council members responded to Warner’s e-mail.

On September 8th, 2023, Davenport City Attorney Tom Warner prepared a settlement agreement signed by him and Tiffany Thorndike.²⁷ Mr. Warner also prepared a settlement agreement signed by him and Samantha Torres on September 8th, 2023.²⁸

The City of Davenport did not post a public agenda containing a motion or resolution to approve either the Torres or Thorndike settlement contracts prior to September 8, 2023.²⁹ Prior to September 8, 2023, Thomas Warner never provided the City Council for approval the actual settlement agreements signed by Tiffany Thorndike and Samantha Torres. Judith Lee testified she received a copy of the Thorndike and Torres settlement agreements towards the end of November 2023.

Per the terms of the Thorndike and Torres settlement agreements, the date upon which their employment ended was October 13, 2023.³⁰ On October 20, 2023, the City of Davenport paid Thorndike \$157,000 and Torres \$140,500.³¹

²⁴ Plaintiff’s Exhibit 4.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Plaintiff’s Exhibit 5.

²⁸ Plaintiff’s Exhibit 6.

²⁹ See Alderman Judith Lee trial testimony.

³⁰ Plaintiff’s Exhibit 5 and 6, Page 1 (1. Definitions) and (6. Wages, Lump Sum Payment . . .)

³¹ Plaintiff’s *First Amended Petition*, Exhibits 6 and 7; See also Defendants’ *Answer to First Amended Petition*, Paragraph 22.

2. Corri Spiegel settlement.

Corri Spiegel drafted a settlement demand letter to the mayor and members of the Davenport City Council dated September 15, 2025.³² Judith Lee testified that she did not see this demand letter prior to October 6, 2023.

The City Council conducted a closed (executive) session meeting on October 4, 2023, pursuant to Iowa Code chapter 21.5 (1)(3). On that date the City council did not formally vote on the settlements. Alderman Rick Dunn testified the Council does not vote on matters in a closed session meeting.

In the January 30, 2025, *In Camera Ruling and Order*, the Court found for the content of the closed session “all discussions were singularly focused on impending litigation and litigation strategy.”³³ Following the executive session meeting, the City Council did not adjourn into an open meeting to vote on the Spiegel settlement agreement.

Alderman Lee testified that at October 4, 2023, special session meeting of the Davenport City Council she became aware of allegations raised by Corey Spiegel, including allegations against Lee. She was not aware whether or not the Torres and Thorndike claims were valid with respect to anyone else. She did not believe claims against her were valid.

The City Council did not conduct a vote between October 4 and October 6, 2023, on the Spiegel settlement agreement in an open session of the City Council.³⁴ Alderwoman Judith Lee testified that the Spiegel settlement was not placed on a City Council agenda for a vote by the City Council in an open session prior to October 6, 2023. The City Council never took a roll call vote on the Spiegel settlement contract at an open City Council meeting prior to Mr. Warner signing the agreement on October 6, 2023. On October 6, 2023, two days after the closed session meeting, Tom Warner executed the settlement agreement with Corri Spiegel.³⁵

C. Additional Factual Basis for Settlement Agreements

Davenport City Council, including Judith Lee, participated in a hearing to and removed Alderman Cornett. Thorndike named 6 elected officials, including Cornett, in her

³² Plaintiff's Exhibit 8.

³³ January 30, 2025, *Ruling and Order*, Page 5.

³⁴ See Judith Lee trial testimony.

³⁵ Plaintiff's Exhibit 10.

August 31, 2023, settlement demand.³⁶ Alderman Lee testified she was aware of harassment claims against Alderman Cornett.

IV. Diercks' First Amended Count II (Iowa Open Meeting Act)

A. Did the City violate the Open Meeting Act based on Tom Warner's September 6, 2023, email or based on the September 8, 2023, settlement agreements?

1. Was the September 6, 2023, email regarding Thorndike and Torres settlement a closed meeting pursuant to 21.5 (1)(c)? Were there private meetings pursuant to 21.5 (1)(c)?

Diercks has alleged that Warner's September 6, 2023, e-mail to the City Council³⁷, and alleged secret meetings between Warner, and Alderman Condon, Jobgen, and Gripp were conducted in direct violation of Chapter 364 of the Iowa Code, the IOMA (Iowa Open Meetings Act) and Davenport City Code section 2.40.020(L).³⁸ Diercks has alleged that, "[t]he Council cannot lawfully conduct public business by sending emails between the council and the city attorney, pursuant to the IOMA."³⁹

Diercks did not present evidence of secret "meetings" between City Attorney Tom Warner and any of the three named Aldermen. Tom Warner did discuss the Thorndike and Torres settlement demands with individual Alderman before sending his September 6, 2023, email. However, those discussions were not prohibited "meetings" pursuant to Chapter 21.2(2) because there was no deliberation or action which constituted a majority of the members council.

Similarly, the September 6, 2023, email from the City Attorney to members of the Council was not a "meeting" pursuant to the Open Meetings Act. It was not "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon a matter within the scope of the governmental body's policy-making duties."⁴⁰ There was no "deliberation or action" associated with the September 6, 2023, email because no one from the Davenport City Council responded.

³⁶ Plaintiff's Exhibit 1, Page 2; See also Corri Spiegel testimony

³⁷ Plaintiff's Exhibit 4.

³⁸ See Plaintiff's Post-Trial Brief, Page 4.

³⁹ See Plaintiff's Post-Trial Brief, Page 2.

⁴⁰ Iowa Code 21.2 (2); See also *Hutchinson v. Schull*, 878 N.W.2d 221, 231 (Iowa 2016)

This Court finds no violations of Chapter 21 by virtue of (1) the September 6, 2023, email, (2) no secret meetings or no serial “meetings” of the City Council.

2. Did the City Council violate the Open Meetings Act by not taking final action in an open meeting prior to the September 8, 2023, settlement agreements?

Diercks also claims that “[t]he Council did not vote to approve in an open meeting and was not provided the actual Thorndike and Torres settlement agreements prior to its execution.”⁴¹ Diercks further alleged in his Post-Trial Brief that “[t]here was no vote taken to approve the execution of the Thorndike settlement agreement or the Torres settlement agreement prior to September 8, 2023, directly violating IOMA.”⁴²

As pointed out by Diercks’s counsel, “[t]here was no public action or discussion by the Council on either the Thorndike or Torres settlements prior to September 8, 2023.”⁴³ Further, Tom Warner’s September 6, 2023, email to the City Council aldermen and Alderwomen was not a Chapter 21 “meeting,” either an open or a closed one.⁴⁴ Therefore, Tom Warner’s September 8, 2023, one-way email communication with Council members was not governed by the Open Meetings Act.⁴⁵ That email to the City Council was not a “meeting,” so it did not trigger any Chapter 21 obligations prior to or on September 8, 2023, including that “[f]inal action by any governmental body on any matter shall be taken in an open session.”⁴⁶ Therefore, there was no Open Meetings Act violation.

Tom Warner settled the Thorndike and Torres claims based on his email, not on a closed meeting of the City Council.

C. The October 4, 2023, City Council closed session meeting is not legally relevant for the Count II (Open Meetings Act). Count II, however, is relevant to the December 13, 2023, council meeting.

This Court reviewed the February 2, 2024, First Amended Complaint to determine whether Diercks made legal claims concerning the October 4, 2023, council meeting. In Counts I, II or III, Diercks did not plead any claim arising out of City Council actions on October 4, 2023. Count I stated, “this Certiorari petition challenges the action of the

⁴¹ Plaintiff’s First Amended Petition, Paragraphs 10-11.

⁴² Plaintiff’s Post-Trial Brief, Page 2, paragraph 1.

⁴³ Plaintiff’s Post-Trial Brief, Page 3, paragraph 2.

⁴⁴ Iowa Code 21.2 (2)

⁴⁵ *Gavin v. Cascade*, 500 N.W.2d 729, 732 (Court App. 1993) (Section 21.6 (2) does not apply unless a meeting, as defined by 21.2 (2) has taken place.) citing *Wederger v. Board of Directors*, 307 N.W.2d 12, 18 (Iowa 1981)

⁴⁶ Iowa Code 21.5 (3)

Council acting in their official capacity on December 13, 2023, regarding the alleged ratification of the three settlement agreements⁴⁷ Count II of the First Amended Petition only addressed the December 13, 2023, meeting.⁴⁸ Finally, Count III addressed the December 13, 2023, meeting and is entirely silent to the October 4, 2023, closed session meeting.⁴⁹ Further, the general allegations do not mention the date October 4, 2023 or any closed session meeting on or about that date.

Diercks was on notice of the October 4, 2023, closed session meeting as early as September 19, 2024.⁵⁰ By *Motion for In Camera Review*, Diercks inquired of the actions taken during that October meeting.⁵¹ Judge Cleve reviewed the October 4, 2023, audio recording and he mentioned that in his January 30, 2024, and February 25, 2024, Rulings. Before the close of pleadings on March 20, 2024, (60 days before trial), Diercks did amend his Petition to allege a claim arising out of that closed session meeting.⁵² Finally, Diercks also did not assert a claim arising out of the October 4, 2023, closed session meeting within six months.⁵³ Diercks filed his motion for Leave to Amend on April 9, 2025, nineteen days after pleadings closed, and more than fifteen (15) months after the October 4, 2023, closed meeting.⁵⁴

This Court, in the exercise of its discretion, denied Diercks's Motion for Leave to Amend to assert that claim due to the delayed amendment filing in violation of the Agreed Discovery Plan.⁵⁵ Therefore, Diercks had no legal claim for a violation of the Open Meetings Act arising out of the October 4, 2023, closed session meeting.

In the interest of judicial economy, the Court reviews the evidence presented concerning October 4, 2023.

⁴⁷ Plaintiff's *First Amended Petition*, Paragraph 36.

⁴⁸ Plaintiff's *First Amended Petition*, Paragraphs 108, 111- 123.

⁴⁹ Plaintiff's *First Amended Petition*, Paragraphs 126-127.

⁵⁰ See Plaintiff's Exhibit 12, Defendant's Answers to Interrogatories.

⁵¹ September 26, 2024, *Motion for In-Camera Review*, Paragraph 2.

⁵² See July 29, 2024, *Order Setting Trial and Approving Plan*, and July 26, 2023, *Trial Scheduling and Discovery Plan*, Paragraph 5.

⁵³ See Iowa Code 21.6 (3)(3) (2023).

⁵⁴ See also *Adele v. City of Pleasant Hill*, 755 N.W.2d 144 (*4 Table) (Iowa App. 2008) (Affirming the denial of motion to amend when Plaintiff asserted claim 15 months after filing Petition.)

⁵⁵ See May 9, 2025, Order Denying Plaintiff's motion for Leave to Amend.

There is no evidence or allegation that the October 4, 2023, city council meeting agenda was improper.⁵⁶ The City Council properly conducted its closed session starting at 7:59 p.m. and ending at 9:07 p.m.⁵⁷

The Court concluded the matters discussed (content) in that closed session “was singularly focused on impending litigation and litigation strategy.”⁵⁸ The City Council took no formal vote to authorize settlement. Alderman Rick Dunn testified the City Council does not take formal votes in closed session meetings. Therefore, even if Diercks had timely amended its Petition to allege a claim arising out of the closed meeting session. The Court found that on October 4, 2023, while in the closed session meeting the City Council *assented* to Tom Warner’s previously negotiated and drafted Thorndike and Torres settlement agreements as well as the soon-to-be negotiated and drafted Spiegel settlements

Based on the May 9, 2025, Ruling of this Court, there is no allowed Open Meetings Act claim arising from the October 4, 2023, closed session. Even if there were an allowed timely claim, there was no violation for the meeting agenda, its timely posting, or discussion content in the closed session meeting.

D. Did the City violate the Open Meetings Act based on the manner in which the Council conducted its December 13, 2023, sessions?

Did the City Council conduct an unauthorized secret meeting in violation of Chapter 21.5?

Iowa Code 21.5 (1)(c) states:

1. A governmental body may hold a closed session only by affirmative public vote of either 2/3 of the members of the body or all of the members present at the meeting. The governmental body may hold a closed session only to the extent that closed session is necessary for any of the following reasons:

(c) To discuss strategy with counsel in matters that are presently in litigation or where litigation is eminent where its disclosure would be

⁵⁶ Defendant’s Exhibit F, Tab 1, Return 6; See also February 25, 2025, *Ruling and Order Following In Camera Review*, Page 2, footnote 1. Judge Cleve noted, “For both sessions the Davenport City Council provided the following agenda: ‘To discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5 (1)(c).’ “

⁵⁷ Defendant’s Exhibit F, Tab 1, Return 8; See also Defendant’s Exhibit I.

⁵⁸ January 30, 2023, *Ruling Following In Camera Review*, Page 5.

likely to prejudice or disadvantage the position of the governmental body in that litigation.

1. December 13, 2023, City Council meeting agenda

The City Council prepared a meeting agenda ahead of the December 13, 2023, council meeting.⁵⁹ The agenda included item “XVI. Executive Session: (1) To discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5 (1)(c).⁶⁰ Assistant City Clerk Brian Krup testified he posted the agenda 24 hours in advance of the meeting. That agenda also stated, “[f]ollowing the closed session, the City Council may reconvene in open session to consider the ratification of settlement agreements with Corri Spiegel, Tiffany Thorndike, and Samantha Torres.”⁶¹ These actions complied with the Open Meetings Act agenda requirements for a closed session meeting.

2. December 13, 2023, City Council open session meeting before the closed session

This Court received the videotape⁶² and audio tapes⁶³ of the open session. The City Council video record for agenda item XIV is “Public with Business” starts at 1:33:37 on the video.

Davenport citizen, Dr. Ezra Sindra, addresses the City Council concerning the proposed ratification of the Thorndike, Torres, and Spiegel settlements. He reminded the City Council that he had told them the prior week at the December 6, 2023, Committee of the Whole meeting that the settlements were unethical, illegal, and would come back to bite you.⁶⁴ He then begged the City Council “to do the right thing” and “do not ratify the settlement agreements.”⁶⁵ Instead of settling the sexual harassment claims, he stated, “nobody believes they were sexually harassed,” and “Let them sue” the City to force the employees to sue for sexual harassment.⁶⁶

The City Council did not respond to these public requests. The council agenda for “Public with Business” states, in part, “[in] accordance with Open Meeting law, the council can not take action on any complaint or suggestions tonight and can not respond to any allegations made.”⁶⁷ Thereafter on motion of the council and affirmative vote by a majority,

⁵⁹ Defendant’s Exhibit A.

⁶⁰ *Id.*

⁶¹ Defendant’s Exhibit A, Page 7.

⁶² Defendant’s Exhibit E.

⁶³ Defendant’s Exhibit G.

⁶⁴ Defendant’s Exhibit E, 1:35:07 -1:35:18.

⁶⁵ Defendant’s Exhibit E 1:36:03 -1:36:09; 1:36:14-1:36:33

⁶⁶ Defendant’s Exhibit E 1:36:10-1:36:14

⁶⁷ Defendant’s Exhibit A, Page 7 (XIV. Public With Business)

the City Council adjourned into its so-called “Executive Session,” a closed session meeting. The City Council kept detailed minutes of the closed session meeting.⁶⁸

The City prepared official open meeting minutes following the December 13, 2023, City Council meeting.⁶⁹ The meeting minutes for agenda item Section “XVI. Executive Session” stated:

On motion by Alderwoman Meginnis, seconded by Alderman Ortiz, and all Alderman present voting aye (Alderwoman Lynch was not in the room for the vote and Alderwoman Lee no longer connected via telephone), Council recessed to executive session at 7:09 p.m. Council reconvened in Executive session at 7:16 p.m. to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code 21.5(1)(c).⁷⁰

3. December 13, 2023, City Council closed session meeting conduct

Pursuant to Iowa Code 21.5 (5) (b)(1), Diercks filed his *Motion for In Camera Review* of the closed sessions meeting minutes and audiotapes.⁷¹ Judge Cleve reviewed both the closed session audio tapes from the October 3, 2023, and the December 13, 2023, meetings.⁷²

Judge Cleve found, in relevant part, “that the October 4, 2023, audio recording and the detailed minutes and the audio recording from the December 13, 2023, city council meeting are privileged. It is the ruling of the Court that the detailed meeting minutes and the audio recordings from the closed sessions are not public records open to public inspection.”⁷³ Judge Cleve’s Ruling also found that, “[w]ithout disclosing the details of the closed sessions, the Court notes that all of the discussions were singularly focused on impending litigation and litigation strategy.”⁷⁴

Then-acting City Attorney Brian Heyer attended that December 13, 2023, closed session meeting. Mr. Heyer took the Executive Session Summary notes.⁷⁵ He testified at trial that nothing was discussed other than legal matters involving litigation or where

⁶⁸ January 30, 2025, Ruling Following In Camera Review, Page 2.

⁶⁹ Defendant’s Exhibit B.

⁷⁰ Defendant’s Exhibit B, Page 10.

⁷¹ September 26, 2024, Motion for In-Camera Review of October 4, 2023, City Council Closed Session

⁷² January 30, 2023, Ruling Following In Camera Review.

⁷³ January 30, 2023, Ruling Following In Camera Review, Page 6.

⁷⁴ January 30, 2023, Ruling Following In Camera Review, Page 5.

⁷⁵ Defendant’s Exhibit J.

litigation was imminent. Mr. Heyer confirmed that the City Council voted in the closed session to go back into an open session meeting.⁷⁶

4. December 13, 2023, City Council open session meeting conduct after the closed session

After the closed session meeting, the Davenport City Council returned to its public open session meeting. The Council meeting minutes state,

On motion by Alderman Jobgen, second by Alderman Gripp, council went back into open session at 8:42 p.m. to consider a motion to ratify settlement agreements with Corey Spiegel, Tiffany Thorndike and Samantha Torres with Mayor Matson and all Alderman present except Alderwoman Dickman, Alderwoman Lee, and Alderwoman Lynch . . .

On motion by Alderman Dunn, seconded by Alderman Jobgen and all Alderman present except Alderman Kelly, the following motion passed: motion to ratify the settlement agreements with Corey Spiegel, Tiffany Thorndike and Samantha Torres. PASSED 2023-548.

The “Executive Session Summary” sheet states, in relevant part, “Council went back into open session” and then in Mr. Heyer’s handwriting that “Motion to ratify amts w/ Spiegel, Thorndike, Torres made and seconded Adopted 6-1 (Kelly) (Dickman, Lee, Lynch not present).”⁷⁷ The Court interprets this handwritten note as that Alderman Kelly voted against the motion.

The videotape⁷⁸ and audio tapes⁷⁹ of the open session meeting confirm the meeting minutes. The video record of the Council adjourning to Executive session is between 1:37:07 and 1:37:51 on the video record. The council returned to open session at 3:11:54. The City Council motion to ratify the Thorndike, Torres and Spiegel was found at 3:12:21-3:12:40 on the video record. The Council passed the motion to ratify and then adjourned at 3:12:50.

Based on the foregoing findings and evidence, this Court concludes the Davenport City Council did not violate the Iowa Open Meetings Act on December 13, 2023, for the scheduled and posted agenda, for voting and entering into the closed session meeting, its conduct during the closed session meeting, adjourning from closed and entering into an open session meeting, or its subsequent open session meeting. The Court concludes that

⁷⁶ Defendant’s Exhibit H.

⁷⁷ Defendant’s Exhibit B, Page 10.

⁷⁸ Defendant’s Exhibit E.

⁷⁹ Defendant’s Exhibit G.

as to these issues the City of Davenport and its City Council satisfied the requirements of Chapter 21, including Iowa Code 21.6 (3)-(4).

E. Did the City Council violate the Open Meetings Act based on the requirement that following action in a closed session the Council must then take “final action” in an open session?

A city council can authorize settlement in a closed session but “final action by any governmental body on any matter shall be taken in an open session.”⁸⁰ On October 4, 2023, in the closed session meeting the Davenport City Council authorized⁸¹ the City Attorney, Tom Warner, to settle the Spiegel claim for \$1.6 million dollars.⁸² The City did not announce its closed session actions in an open meeting that October 4, 2023.

When was the City Council supposed to take final action? Was the City Council supposed to announce the authorization to settle on October 4, 2023? The Court concludes the answer is “no” because authority to settle is a precursor for settlement negotiations with Spiegel. There was no settlement on October 4, 2023. In *Dillon*, the Court concluded that, “[t]o make a public disclosure and alert the opposing side to proposed settlement negotiations would be self-defeating.”⁸³ That remained sound advice for the City and its City Council in 2023.

1. October 4, 2023, closed session.

The Diercks’s First Amended Petition did not assert any claims based on the October 4, 2023, City Council’s closed session meeting. Based on the May 9, 2025, Court Order, Diercks did not timely assert a claim arising from that October 4, 2023, meeting. Therefore, Diercks had no trial claim that on October 4, 2023, the City violated the Open Meetings Act because the City Council failed to take “final action”⁸⁴ that same night. Further, this Court concludes section 21.5 (3) did not require the City Council to take final action that night. The Court confines its analysis of this legal issue following the October 4, 2023, meeting, and through the December 13, 2023, closed session meeting.

2. October 6, 2023, settlement agreement.

Following the October 4, 2023, closed session, Tom Warner prepared and then signed a settlement agreement with Corri Spiegel on October 6, 2023.⁸⁵ Diercks alleged

⁸⁰ Iowa Code 21.5 (3). See also *Dillon v. City of Davenport*, 366 N.W.2d 918, 923 (Iowa 1985).

⁸¹ Judge Cleve described the council action as “assenting” rather than “authorizing.”

⁸² Plaintiff’s Exhibit 12, Page 2 (Defendant’s Answer to Interrogatory No. 3.)

⁸³ *Dillon v. City of Davenport*, 366 N.W.2d at 923 (Iowa 1985)

⁸⁴ Iowa Code 21.5 (3).

⁸⁵ Plaintiff’s Exhibit 10.

that “there was not a closed session or open session held by the Council authorizing a settlement between the City and Spiegel, prior to October 6, 2023.”⁸⁶ That is not correct.

Tom Warner did not act in a closed session council “meeting” when he executed the Spiegel settlement agreement on October 6, 2023. The Council did not conduct a governmental meeting on October 6, 2023, subject to the requirements of Chapter 21.

3. October 7, 2023, to December 12, 2023.

In his First Amended Petition Diercks alleged that “[o]n November 22, 2023, the City first publicly announced the Settlement Agreement executed with Spiegel.” Diercks also alleged that “[o]n November 29, 2023, the City first publicly disclosed the two Settlement agreements executed with Thorndike and Torres.” Defendant denied these allegations. It is unknown whether the City denied based on the alleged dates or for other reasons.

During the trial Diercks presented no evidence to confirm these dates. However, no later than December 6, 2023, members of the public were aware of the settlements and Dr. Sindra discussed his concerns with the settlement at the council of the whole meeting.⁸⁷

4. December 13, 2023, closed session

What was the “final action” taken by the City Council on the Spiegel settlement? It was not the October 4, 2023, closed session meeting when the City Council gave its “assent” for Warner to negotiate the Corri Spiegel settlement agreement.⁸⁸ Therefore, the Court looks only to the open meetings of the City Council on December 13, 2023. On December 13, 2023, was the Council required to or did it take “final action” on the three settlements in an open session?

The phrase “final action” is not defined in Iowa Code Chapter 21. *In Adele v. City of Pleasant Hill*, the Court of Appeals analyzed the meaning of “final action” in Chapter 21 in the context of city council passage of an ordinance.⁸⁹ The Court found that the “final action” was when the mayor signed the ordinance into law, not when the council discussed future action to be taken.⁹⁰ This Court finds no other case law and none is provided by legal counsel interpreting “final action” in the context of Chapter 21.

⁸⁶ Plaintiff’s *First Amended Petition*, Paragraph 46.

⁸⁷ Defendant’s Exhibit E , 11:35:07 -1:35:18. (See Dr. Ezra Sindra statement of discussing settlements at December 6, 2023, Council meeting)

⁸⁸ Compare that Court finding of “assent” to Defendant’s Answer to Interrogatory No. 2 , which states, in relevant part, “[o]n October 4, 2023, the City Council authorized the City Attorney to settle the Spiegel claim for \$1.6 million.

⁸⁹ *Adele v. City of Pleasant Hill*, 755 N.w.2d 144 (*3 Table).

⁹⁰ *Id.*

This Court concludes that the “final action” by the Council on the settlements was the public disclosure and then approval of the settlement arising from the closed session. The “action” taken is the public action on the completed settlement.

The Court considered whether the City Council took “final action” on December 13, 2023. Was that final action based on the October 4, 2023, closed session meeting that resulted in the settlement authority, followed by actual settlements, and then required subsequent “final action” by the City Council? Was it announcing or approving the final settlement reached October 6, 2023? What final action did the Council take on that date in an open session?

On December 13, 2023, during the closed session the Council discussed litigation strategy pursuant to Iowa Code 21.5 (1)(c). What was the particular litigation in which the council discussed strategy with the council? Did it even involve the three settlement agreements? Was it discussion of the threat by Dr. Ezra Sindra, right before adjournment into closed session, that ratification of settlement agreement was illegal? Was it whether the settlement agreement(s) should or could be approved or ratified?

The evidence reveals Judge Cleve’s factual findings that the Council and its legal counsel discussed litigation strategy. Attorney Brian Heyer testified during that closed session no motion was made and the settlement ratification vote was not discussed. There is no evidence that the Council took any action on December 13, 2023, in that closed session which required final action in an open session.

The evidence, by agenda and meeting minutes, is that on December 13, 2023, the City Council held a closed session meeting with council for a legal strategy discussion and then recessed into an open session. In the open session the Council, as announced on its meeting agenda, considered and “ratified” the Spiegel settlement agreement. In the context of Chapter 21, ratification has the same meaning as approved.

This Court finds no evidence that on December 13, 2023, the City Council violated the requirements of Iowa Code 21.5 (3) by acting in a closed session and then failing to act in a public session. The Council took final action in an open session on the three settlements. The issue before this Court is not whether the council should have acted sooner. Instead, it is whether the council acted. Undeniably, it did act in an open session on the settlements.

F. Meaning of “actual litigation or where litigation is imminent”

Iowa Code Chapter 21.5 (1)(c) states, a governmental body may hold a closed session only to the extent a closed session is necessary or any of the following reasons:

To discuss strategy with council in matters that are presently in litigation or where litigation is imminent where its disclosure would likely prejudice or disadvantage the position of the governmental body in that litigation.

Diercks argued that “there was no present or imminent litigation from the three City employees, when the Council held their December 13, 2023, executive (allegedly secret) session on the purported “Ratification” of these three settlements.”⁹¹ Diercks also alleged that “[th]e December 13, 2023, executive (secret) session was held ostensibly to keep the public from hearing the Council’s discussions on these three controversial settlements and preventing the public from stating objections to the purported “ratification” of these three settlements.”⁹² Yet, Diercks provide no evidence of that.

Then-Acting City Attorney, Brian Heyer, disputed that fact at trial by credibly denying on cross-examination that the Council discussed the ratification vote on December 13, 2023. He also agreed that there were other claims that were threatened or that the City had knowledge of that would potentially result in imminent litigation that the Council wished to discuss with legal counsel.

Was there an improper purpose of the December 13, 2023, closed session? The Diercks also asserted that the purpose of the meeting was to discuss the merits of the settlements rather than to discuss privileged legal strategy. At trial attorney Brian Heyer, who was present during the closed session meeting, again credibly testified that there was nothing else discussed. That meant no discussion by the City Council regarding the settlements.

Based on his *In Camera* Review of the December 13, 2023, closed session meeting minutes and audio tape, Judge Cleve found that “all of the discussions were singularly focused on impending litigation and litigation strategy.”⁹³ Instead, the only evidence is that; “. . . both meetings in their entirety were focused on imminent or pending litigation.” Was something else discussed during that closed session?

Diercks then filed a Motion pursuant to Iowa Rule of Civil Procedure 1.904 (2) requesting the Court to enlarge or modify the January 30, 2025, Order and Ruling. That Motion requested that the Court make findings as to the “other topics” allegedly discussed at the October 4, or December 13, 2023, closed sessions. In response, the Court found

⁹¹ Plaintiff’s First Amended Petition, Paragraph 115.

⁹² Plaintiff’s First Amended Petition, Paragraph 117

⁹³ January 30, 2024, *Ruling Following in Camera Review*, Page 4.

that “[t]he court stands by its prior ruling; both meetings in their entirety were focused on imminent or pending litigation.”⁹⁴

Diercks has definite suspicions of what happened during the closed sessions meetings and alleged those in his Petitions. However, Diercks presented no evidence at trial that on December 13, 2023, the City Council discussed the merits of any settlements. Brian Heyer testified there were none and Judge Cleve found no evidence that the Council discussed the merits of the settlements.

Why are we left to rely on Judge Cleve’s audio recording findings instead of hearing those? Specific discussions between the Council and its attorney(s) are protected from public disclosure by attorney-client privilege. On January 30, 2025, the Court determined the content of the discussions during the closed session meetings were protected from disclosure by the attorney-client privilege.

The purpose of the discussion of litigation strategy with counsel exception is to protect the attorney-client privilege, not to throw a shroud around public documents that might relate to an on-going controversy. This attorney-client privilege protection for a closed session requires the presence of legal counsel at the meeting.⁹⁵ Attorneys Dick Davidson, Brett Marshall and then-acting City attorney Brian Heyer were present during that December 13, 2023, closed session meeting.⁹⁶

Based on his *In Camera Review* of the December closed session meeting, Judge Cleve found that the contents of the audiotape and the detailed meeting minutes were protected by the attorney-client privilege.⁹⁷ He also found that “all of the discussions were singularly focused on impending litigation and litigation strategy.” Therefore, there is no evidence whatsoever that the City Council discussed the merits of any settlements. Instead, the only evidence is that; “. . . both meetings in their entirety were focused on imminent or pending litigation.”⁹⁸

Diercks alleged the December 13, 2023, closed session meeting was improper because those discussions concerned the three settlement agreements. Diercks alleged that the settlements were complete and, therefore, that any settlement discussions were not for threatened or impending litigation. The Court finds the evidence does not support the alleged that there were settlement discussions during the closed session.

⁹⁴ February 25, 2025, *Ruling and Order on Plaintiff’s 1.904 Motion*, Page 2.

⁹⁵ *Olinger v. Smith*, 889 N.W.2d 476, 482 (Iowa App. 2015).

⁹⁶ Defendant’s Exhibit J.

⁹⁷ January 30, 2025, *Ruling Following In Camera Review*, Page 5.

⁹⁸ January 30, 2025, *Ruling Following In Camera Review*, Page 2.

Finally, the public was not prevented from commenting on the proposed settlements and ratification. On December 13, 2023, the public objected to the proposed ratification, when Dr. Sindra addressed the Council in an open session. Dr. Sindra also stated he objected during the December 6, 2023, council meeting.

The Court finds City Council did not discuss the merits of the three settlements or ratification at the December 13, 2023, meeting. The City Council meeting with its attorneys was focused on other imminent or pending litigation. The Court finds the public had notice of the agenda item to consider ratification of the three settlements and there was public discussion of whether to ratify the settlement agreements. Finally, the Court finds the Council took its final and public action on the settlement agreements during the December 13, 2023, open session.

G. In the alternative, if the Iowa Open Meetings Act were violated, then are the settlement agreements void?

This Court has concluded that the City of Davenport did not violate the Iowa Open Meetings Law because: (1) the September 8, 2023 settlement agreements were not a closed session meeting; (2) the October 4, 2023 closed session meeting was not a claim before the Court; (3) the October 4, 2023 city council assent to settlement did not required final action by the Council on that date; (4) the October 6, 2023, settlement agreement was not a closed session meeting; and (5) on December 13, 2023, the City Council properly conducted its closed session meeting and took final action on settlement agreements in an open session.

This Court finds no Chapter 21 violations. Nevertheless, solely for purposes of judicial economy this Court addresses the remedy issue, i.e., if there were a violation of the Open Meetings Act.

Iowa Code 21.6 (3) states that, “[u]pon a finding by a preponderance of the evidence that a government body has violated any provision of this chapter, a Court:

(c) shall void any action taken in violation of this Chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session.

If there were a violation, then this Court would be required to weigh the public interest in enforcement of the policy of Chapter 21 with the public interest in sustaining the validity of the action taken in the closed session. Iowa Code chapter 364.3 (3) (discussed in Section

V) mandates that unauthorized city council actions are void and there is no discretion otherwise. Iowa Code 21.6(3) provides for discretion in the form of this balancing test.

There is a strong public interest in the City of Davenport complying with the Iowa Open Meetings Act. This strong public interest is evidenced by the t-shirt worn by Dr. Ezra Sindra stating, “FOIA and Find out,” as he spoke before the City Council on December 13, 2023, during the “Public with Business” portion of the Council meeting.⁹⁹ Within the parameters of Chapter 21, taxpayers and citizens alike deserve to know what their local government is doing. The Iowa Supreme Court has noted in the context of municipal law that “sunlight is said to be the best of disinfectants.”¹⁰⁰ Chapter 21 is one legislative method for the disinfecting of local government.

Initially, the City Council did not fully disclose to the citizens of Davenport the legal claims and factual assertions of Thorndike, Torres and Spiegel. The City could have voluntarily done more.¹⁰¹ Were the assertions embarrassing to the City and the named individuals? Definitely. Were the assertions fair and accurate? We do not know. Arguably the City’s efforts to shield these matters from full public disclosure were not successful. Ultimately the settlement demand letters, settlement agreements and payments became public. The City is left worse off for the delay based on the damage to its reputation for open governance.

It is unlikely there would be litigation in this matter if on or before September 8, 2023, the City Council authorized the Thorndike and Torres settlements in an open meeting. The same can be said if on or before the October 6, 2023, the City Council authorized the Spiegel settlement in an open meeting. The public can disagree with the settlement decisions of the City Council, but those are decisions left to the City Council. More public disclosure by the Council would have addressed the Chapter 21 Open Meetings Act issues, and the Chapter 363.3 (1) issues, discussed in section V of this Opinion and Ruling.

The counter-balance is the public interest in sustaining the validity of any alleged procedurally improper actions taken in closed sessions. Dr. Ezra Sindra, who spoke at the December 13, 2023, Council meeting during agenda item “XIV Public With Business,” stated he had warned the Council the week before (December 6, 2025) not to ratify the settlement agreements. He reiterated this position on December 13, 2023. There is no question the City Council heard the strong public opposition, including the belief that there

⁹⁹ Defendant’s Exhibit E; 1:37:00

¹⁰⁰ *City of Riverdale v. Diercks*, 806 N.W.2d 643, 645 (Iowa 2011)

¹⁰¹ Iowa Code 21.5 (6) (Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.)

was no sexual harassment. The public told the City Council that instead the former employees should be required to file a lawsuit to prove their claims.

Notwithstanding that impassioned plea, the City Council voted 6-1 to ratify the settlements. Perhaps the Council acted based on the detailed written harassment allegations made by Thorndike, Torres and Spiegel. Despite the public invitation for litigation, perhaps the City Council felt that litigation was not in the best interest of the City. With the settlement and a signed release, the City and its officers, employees and agents received a full and final release in return for the settlement agreement. Another consideration is potential litigation costs to defend the City, including its statutory duty to defend its officers, employees, and agents.¹⁰² Whatever the reasons, good or bad, the City Council exercised its legislative power to settle the three cases.

What does a “void” settlement agreement mean pursuant to section 21.5 (6)? The settlements have been performed fully. The City paid the funds and undoubtedly Thorndike, Torres and Spiegel cashed in the funds. Practically-speaking, two years later can the City undo an allegedly void settlement agreement? Is the City supposed to file a separate lawsuit, take it to judgment, and then collect roughly \$1,900,000?

What about the former employees? In an Iowa Code Chapter 364.3 (1) proceeding, common law defenses, such as promissory estoppel, do not apply for void agreements. There is no such mandate for Iowa Code 21.6 (3)(c), but instead a balancing test.

The applicable statute of limitations have expired for Thorndike, Torres and Spiegel to file civil rights claims with the Davenport or Iowa Civil Rights Commission as well as the federal EEOC. What would be the recourse for Thorndike, Torres, and Spiegel? Do these former employees file affirmative defenses and counter-claims to the City’s lawsuit? If this Court voids the settlements pursuant to Section 21.6 (3)(c), ultimately this might result in a new litigation by the former employees or a settlement with the same terms, except now in compliance with Chapter 21?¹⁰³ That would be a waste of time and resources.

Pursuant to Iowa Code 21.6 (3)(c) this Court finds the public interest considerations in sustaining the validity of the settlement agreements outweigh the public interest considerations in enforcing Chapter 21. The settlement are disclosed to the public and the

¹⁰² Iowa Code 670.8

¹⁰³ *Hutchinson v. Schull*, 878 N.W.2d 221, 237-238 (Iowa 2016) (in considering what relief is appropriate under the circumstances of this case, the court should note that the board eventually approved the reorganization plan at an open meeting and should consider whether this subsequent approval complied with the open meetings requirements and cured any violation of the open meetings law. See *Valley Realty & Dev., Inc. v. Town of Hartford*, 165 Vt. 463, 685 A.2d 292, 296 (1996) (holding a land purchase made in violation of an open meetings law should not be voided because its ratification in a subsequent meeting complying with open meetings requirements cured the violation of the open meetings law).

action of the city laid bare for the public to see. This Court would not void the three settlement agreements even if the settlements were void pursuant to the alleged violations of Iowa Code 21, which this Court expressly does not find occurred.

In Section V (E) of this Ruling and Order, the Court addresses the separate issue of ratification of void agreements pursuant to Iowa Code 364.3(1). The analysis of Iowa Code 364.3(1) is different for Iowa Code 21.6 (3)(c).

V. Did the City Council properly authorize the settlement agreements pursuant to Iowa Code 364.3(1)?

A. What is the proper method for a city council to exercise its powers to authorize the settlement of a claim against it?

A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.¹⁰⁴ What exactly is a resolution? The Iowa Supreme Court frequently cites *McQuillin: The Law of Municipal Corporations* as instructive on questions of municipal law. McQuillin has noted that a resolution denotes something less solemn or formal than, or not rising to the dignity of an ordinance.¹⁰⁵ By way of further description, a resolution, generally speaking, is an expression of opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character relating to the administrative business of the municipality."¹⁰⁶ Finally, "[r]esolutions, as distinguished from ordinances, need not be, in the absence of some express requirement, in any set or particular form."¹⁰⁷ The Supreme Court confirmed this statement of the law in *Wood v. Loveless*.¹⁰⁸

In *Dillon v. City of Davenport*, our Supreme Court echoed *McQuillin* and stated, "that formalities were not required in a resolution; The only requirement is an expression of the will of the council upon the question of consenting to a certain proposition."¹⁰⁹ Sounding like *McQuillin* and citing *Sawyer v. Lorenzen*, the *Dillon* Court stated,

A resolution is something less formal than an ordinance and generally speaking, is a mere expression of the opinion or mind of the council concerning some matter of administration coming within its official

¹⁰⁴ Iowa Code 364.3(1).

¹⁰⁵ 5 *McQuillin Mun. Corp.* 15.2 (3d ed) (Resolutions and ordinances distinguished).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Wood v. Loveless*, 244 Iowa 919, 929-930, 58 N.W.2d 368, 374. (Iowa 1953)

¹⁰⁹ *Dillon v. City of Davenport*, 366 N.W.2d 918 (Iowa 1985), citing *Sawyer v. Lorenzen & Weise*, 149 Iowa 87, 127 N.W.1091, 1093 (1910).

cognizance . . . , and no set form of words is essential if the requirement which calls for such expression is met.¹¹⁰

In *Dillon*, the Supreme Court found that, during a closed session meeting of the Davenport City Council to authorize a settlement that “a definite proposition was put before the members of the City Council, and an individual vote was taken.”¹¹¹ The City Council formulated a resolution and memorialized that resolution in writing with a formal vote. Further, the *Dillon* Court further found “no merit in the claim that a resolution is void because it was passed in a closed session.”¹¹²

In *Sawyer*, the Court considered an open session meeting with a “motion or resolution” made and seconded that ‘a liquor license be granted,’ with a written instrument of that action, which the council endorsed and recorded.¹¹³ However, the *Sawyer* Court also noted that as to motions or resolutions “no form is prescribed by statute.”¹¹⁴ Further, it stated that:

a resolution does not require a record of the yea and nay votes of the council and a less formal record of its passage may be sustained than would be required to show the adoption of an ordinance. The record in the instant case is sufficient to show without reasonable doubt that the town council intended by its actions to express its consent to the defendant’s proposal to establish the saloon in question, and that the manner of such expression is not so informal as to render it nugatory.¹¹⁵

The *Sawyer* Court cited *Cooper v. Nelson* as its legal authority.¹¹⁶ *Cooper* concerned an open meeting of the board of directors for a township which passed and then memorialized in written a resolution with a record of the vote. Neither *Sawyer*, nor *Cooper* concerned a closed session meeting authorizing an attorney to settle a claim for the municipality. Instead, each addressed the form of the actions of the municipality taken in an open session.

Is a formal vote in writing required for a resolution, or is something less formal required? This Court does not find any Iowa legal authority specifically addressing a fact situation in which the purported closed session settlement resolution is not in writing, and

¹¹⁰ *Sawyer v. Lorenzen & Weise*, 149 Iowa 87, 91, 127 N.W. 1091, 1093 (1910)

¹¹¹ *Dillon*, 366 N.W.2d at 922.

¹¹² *Dillon*, 366 N.W.2d at 923.

¹¹³ *Sawyer v. Lorenzen & Weise*, 127 N.W. 1091, 1092 (Iowa 1910)

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1093. citing *Cooper v. Nelson*, 38 Iowa 440 (Iowa 1874)

¹¹⁶ *Cooper v. Nelson*, 38 Iowa 440, 443-444 (1874)

a formal vote is not taken. Therefore, this Court must examine whether the action of the City of Davenport in authorizing the settlement “was not so informal as to render it nugatory.”¹¹⁷

B. Settlement Demand and Agreement

1. Diercks’ allegations

Diercks has alleged in his First Amended Petition that:

The city never authorized the three settlement agreements with these three city employees, by passage of a motion or resolution approving the settlements, before they were signed on September 8, 2023 (Thorndike and Torres) in October 6, 2023 (Spiegel).¹¹⁸

“Warner had no municipal or state statutory authority to sign a contract with Spiegel, Thorndike or Torres, unless the council approved each contract by an affirmative vote in an open meeting, taken through a motion or resolution, prior to the execution of each contract.”¹¹⁹

The contract is not enforceable when it is beyond the authority of the attorney who negotiated for the municipality. Section 364.3 (1) of the Iowa Code. See *Dillon v. City of Davenport*, 366 N.W.2d 918 (Iowa 1985).¹²⁰

The three contracts entered into by Warner with Spiegel, Thorndike and Torres on September 8, 2023, and October 6, 2023, without prior approved formal motion or resolution, are each void contracts.¹²¹

The Court should declare Warner's execution of the September 7 (sic), 2023, and October 6, 2023 contracts with Spiegel, Thorndike and Torres as void, ultra vires, unlawful and/or legal under chapter 21 of the Iowa Code, Iowa Open Meetings Act, the Davenport City Code, and established case law previously pled in paragraph 103.

and finally,

The Court should declare the actions of the council on December 13, 2023, to ratify these three contracts as unlawful, illegal, ultra vires and or void under Chapter 21 of the Iowa Code, the Iowa Open Meetings Act, the

¹¹⁷ Sawyer, 127 N.W. at 1093.

¹¹⁸ Plaintiff's First Amended Petition, Paragraph 67.

¹¹⁹ Plaintiff's First Amended Petition, Paragraph 47.

¹²⁰ Plaintiff's First Amended Petition, Paragraph 49.

¹²¹ Plaintiff's First Amended Petition, Paragraph 77.

Davenport City Code and established case law previously pled in paragraph 103.

Diercks takes the position that in order for a city council to legally pass a resolution authorizing settlement authority for a city attorney in a closed session, “the council (must)approve() each contract by an affirmative vote in an open meeting, taken through a motion or resolution, prior to the execution of each contract.”¹²²

C. Spiegel settlement

1. September 15, 2023, settlement demand letter

On September 15, 2023, Corri Speigel drafted a settlement demand letter addressed to Mayor Mike Matson, and members of the Davenport City Council, which she directed to city attorney Tom Warner.¹²³ Speigel generally complained of “workplace hostility and a pervasive violation of my rights as a person and employee. Subsequently, I have suffered through what has been the worst year of my professional career.”¹²⁴ In her settlement demand letter Speigel set forth a litany of specific complaints directed at the former city mayors, as well as three council members.¹²⁵ Speigel demanded monetary damages in return an amicable, professional separation and in lieu of a very public litigation process.¹²⁶

2. October 4, 2023, Council Action in closed session

Per the May 9, 2025, Order of the Court, Diercks does not have an allowed legal claim arising out of the October 4, 2023, City Council closed session meeting. However, the facts surrounding that meeting are relevant to the analysis of this Court as it concerns whether the City Council properly authorized Warner to negotiate and sign the Spiegel settlement agreement on October 6, 2023.

In his First Amended Petition, Diercks made numerous allegations concerning the October 6, 2023, settlement agreement.¹²⁷ Diercks alleged that “[e]ach of the three executed settlement agreements constitutes a void contract between the parties signing

¹²² Plaintiff’s First Amended Petition, Paragraph 47.

¹²³ Plaintiff’s Exhibit 8, generally.

¹²⁴ Plaintiff’s Exhibit 8, Page 1.

¹²⁵ Plaintiff’s Exhibit 8, Pages 2-5.

¹²⁶ Plaintiff’s Exhibit 8, Page 5.

¹²⁷ Plaintiff’s First Amended Petition, Paragraphs 12, 14, 15, 16, 46, 47 (by implication – “Warner had no municipal or state authority to sign a contract with Spiegel . . .,” 48, (by implication – his actions constituted a violation) “56 (by implication “ . . . he was acting outside of his authority by executing each of the three settlement agreements),

the agreements because Warner signed them without prior council approved vote, at a Chapter 21 council open meeting.¹²⁸

In the City's Answer to Interrogatory No. 3 concerning the monetary settlement of \$1,600,000 with Corri Spiegel, the City responded that,

Defendant objects to this interrogatory on the ground it seeks information protected by the attorney-client privilege. Without waiving the attorney-client privilege, on October 4, 2023, the City Council authorized the City Attorney to settle the Spiegel claim for \$1,600,000. On December 13, 2023, the City Council voted in open session to ratify Ms. Spiegel's settlement agreement.¹²⁹

On October 4, 2023, the Davenport City Council conducted a closed meeting (executive session) to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code 21.5(1)(c).¹³⁰ All Alderman were present except for Alderman Dickman, and included in that closed meeting were outside attorney, Jason O'Rourke with Lane & Waterman, and city attorney Tom Warner.¹³¹ That closed session meeting lasted from 7:59 p.m. until 9:07 p.m.

Following an *In Camera* review of the audio tape, Judge Cleve found that during the October 4, 2023, Spiegel Executive Session that,

"The Davenport City Council took no formal vote to authorize city attorney Tom Warner to settle with the disgruntled employees. However, it is apparent from the audio recording that all council members present assented to the proposed settlements."¹³²

In the context of Judge Cleve's finding of City Council authorization for "Tom Warner to settle with the disgruntled employees;" the use of the plural "employees" included the settlements with Speigel,¹³³ Torres and Thorndike.

There are no official meeting minutes for this City Council closed session. City Attorney Tom Warner was present for the closed session and took session meeting notes but failed to prepare formal meeting minutes.¹³⁴ Further, there is no written resolution of

¹²⁸ Plaintiff's First Amended Petition, Paragraphs 18.

¹²⁹ Plaintiff's Exhibit 12.

¹³⁰ Defendant's Exhibit I.

¹³¹ Defendant's Exhibit I.

¹³² February 25, 2025, *Ruling and Order*, Page 4.

¹³³ Plaintiff's Exhibit 12, Answer to Interrogatory No. 3.

¹³⁴ See Tom Warner testimony.

the actions of the City Council. Judge Cleve found there was no formal vote taken authorizing Warner to settle the cases.¹³⁵

On October 6, 2023, at 12:01:31 p.m. Warner corresponded via email with the city council with a subject line of “Confidential Attorney Communication” and stating “[t]he plane landed yesterday. We have been working on wordsmithing some language since.”¹³⁶ The Court concluded this email is in reference to the Spiegel settlement only because Tom Warner previously executed settlement agreements with Torres and Thorndike on September 8, 2023.

Warner and Spiegel signed the settlement agreement that same day of October 6, 2023.¹³⁷ The Spiegel settlement terms included payment to Spiegel in A) A lump-sum payment of \$600,000 for lost wages subject to customary payroll deductions to be paid along with Spiegel’s final payroll check; and B) A lump sum payment of \$1,000,000 for emotional pain and suffering on January 2, 2024 (not subject to employment taxes).¹³⁸ In return, Spiegel agreed to release and forever discharge “the City and its officers, employees and agents, in their official capacities, of an from any and all past or present claims, demands, . . .”¹³⁹

(i). One of the powers of the City of Davenport is the power to settle legal disputes.

Iowa Code § 364.1 grants cities “home rule” powers enumerated in the Iowa Constitution, Art. 3, Section 38A as follows:

A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or of its residents and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents.

Cities in Iowa have the right to sue and can be sued.¹⁴⁰ The power to sue and be sued also includes the power to settle claims, i.e., the power to defend suits brought against the corporation gives them the same power of adjustment (settlement). Cities may compromise doubtful controversies to which the City corporation is a party, either as

¹³⁵ February 25, 2025, Ruling and Order, Page 4.

¹³⁶ Plaintiff’s Exhibit 11.

¹³⁷ Plaintiff’s Exhibit 10.

¹³⁸ Plaintiff’s Exhibit 10, Pages 1-2

¹³⁹ Plaintiff’s Exhibit 10, Pages 2-3.

¹⁴⁰ *Gorman v. Adams*, 143 N.W.2d 648, 651 (Iowa 1966).

Plaintiff or defendant. The law vests in cities a discretion in such matters which they are to exercise for the best interests of corporation.¹⁴¹ Therefore, the Davenport City Council had the general power and legal authority to enter into the Settlement Agreements and to ratify agreements/contracts.

(a). So empowered, did the City Council properly exercise its 364.3 (1) powers to authorize Tom Warner to negotiate a settlement with Corri Spiegel?

(1) Is settlement authorization permitted in a closed session?

Iowa Law does not require the Davenport City Council to act in an open meeting session to authorize its city attorney, Tom Warner, to negotiate a settlement with Corri Spiegel.¹⁴² As stated in *Dillon*,

the only practical method of providing authority to the city attorney to negotiate is in a closed session. To make public disclosure and alert the opposing side to the proposed settlement negotiations would be self-defeating. Consequently, in this limited circumstance a resolution is merely a part of a strategy with counsel.¹⁴³

This Court finds that Iowa law permitted the City Council to grant Tom Warner settlement authorization for Corri Spiegel in a closed session and was not required to do so in an open session of the City Council on October 4, 2023.

(2) On October 4, 2023, while in a closed session meeting did the City of Davenport authorize settlement through a resolution?

Diercks asserts that the Davenport City Council failed to properly exercise its powers pursuant to Chapter 364.3(1) because Diercks failed to make and approve a formal resolution to authorize Mr. Warner to negotiate a settlement with Corri Spiegel before he entered into such an agreement.¹⁴⁴ Therefore, any settlement agreement negotiated and signed by Tom Warner is void.¹⁴⁵

Brueggeman v. Osceola County presented the issue of whether the city council gave prior approval for a settlement agreement.¹⁴⁶ In *Brueggeman* there was no doubt the

¹⁴¹ *Allen v. Cerro Gordo County*, 34 Iowa 54, 62 (Iowa 1872)

¹⁴² See *Dillon v. City of Davenport*, 366 N.W.2d 918 (1985) (We find no merit in the claim that the resolution is void because it was passed in closed session)

¹⁴³ *Id.*

¹⁴⁴ Plaintiff's First Amended Petition, Paragraphs 79-83.

¹⁴⁵ Plaintiff's First Amended Petition, Paragraph 84.

¹⁴⁶ *Brueggeman v. Osceola County*, 954 N.W.2d 764 (2020)

city council approved a resolution; the question was whether that resolution authorized the mayor to negotiate an oral agreement with a third-party. The Court of Appeals noted that it first “must decide whether the city complied with section 364.3(1) before authorizing the mayor to execute a joint agreement with the county to satisfy the requirements under section 403.17(4).” If the city’s resolution did not authorize the mayor’s representation to the supervisors (of his authority to enter into an agreement with the county) then the oral agreement was void. The *Brueggeman* Court found that because the city “did not take formal action to enter (into) the joint agreement with the county, the city did not properly exercise its statutory powers. Therefore, the mayor’s so-called agreement was void and the subsequent agreement that relied on the underlying agreement also was void.”¹⁴⁷

What did the City Council do to authorize Tom Warner to settle Spiegel’s claims? Following an *In Camera* review, Judge Cleve concluded that the contents of the closed (executive) session meeting audiotape for the October 4, 2023, and December 13, 2023, were protected from disclosure by the attorney-client privilege. Therefore, this Court relies on his factual findings of the contents of the audiotapes, including for October 4, 2023.

In that Ruling, Judge Cleve found that during the October 4, 2023, Spiegel Executive Session that:

The Davenport City Council took no formal vote to authorize city attorney Tom Warner to settle with the disgruntled employees. However, it is apparent from the audio recording that all council members present assented to the proposed settlements.¹⁴⁸

This fact finding of no formal vote taken is consistent with the credible trial testimony of Alderman Rick Dunn that the City Council did not vote on matters in closed sessions.

A city council shall exercise a power only upon passage of a motion, resolution, an amendment, or an ordinance.¹⁴⁹ Judge Cleve did not describe the action of the Davenport City Council as a motion, a resolution, an amendment, or an ordinance. This Court analyzes whether that City Council assent to settlement on October 4, 2023, was, in effect, the exercise of power as a resolution pursuant to section 364.3 (1).

Judge Cleve found as a fact that, “it is apparent all council members *assented* to the proposed settlement,” which included Corri Spiegel’s settlement. What does “assented” mean relative to a resolution or other methods for a city to exercise its powers? Is the fact the Council “assented to the proposed settlements” the exercise of the Council’s power of a resolution? We start with the case law.

¹⁴⁷ *Id.*

¹⁴⁸ February 25, 2025, *Ruling and Order*, Page 3.

¹⁴⁹ Iowa Code 364.3(1).

In *Dillon*, in its closed session meeting the Davenport City Council made a formal resolution to approve settlement authority, memorialized it in writing, and took a formal vote.¹⁵⁰ In *Sawyer*, that city council made a motion or resolution to approve the liquor license, memorialized that approval in writing and endorsed by the council, and then recorded.¹⁵¹ However, the Supreme Court opinion in *Dillon*, citing *Sawyer*, emphasized that “a resolution is something less formal than an ordinance and generally speaking is the mere expression of an opinion or mind of the council.”¹⁵²

In 1910 the *Sawyer* Court noted and in 1985 the *Dillon* Court reiterated that there is “no form prescribed by statute” for motions or resolutions.¹⁵³ Moving forward to 2023, that conclusion remains the same. If the legislature thought it necessary to prescribe the form of a resolution then it could have done so in the last 113 years preceding the October 4, 2023, City Council meeting. Further, the legislature, being well-aware of the long-standing judicial interpretation of Chapter 364.3(1) “resolution”, the legislature has left that statutory interpretation and factual application to the judicial branch.¹⁵⁴

Therefore, this Court returns to the question of whether during its closed session meeting on October 4, 2023, the Davenport City Council, by a resolution, granted authority to Tom Warner to negotiate a settlement agreement with Corri Spiegel? If the action of the City Council were taken in an open session meeting with a full record then this Court would have a complete record to review and analyze in detail. Instead, this Court and the Parties have Judge Cleve’s finding that “it is apparent from the audio recording that all City Council present assented to the proposed settlements.”

This Court concludes that when a city council conducts business in a closed session meeting and gives settlement authority by resolution to an attorney that it is highly desirable that the city council use words such as “resolution” or “be it resolved” to make it abundantly clear that it is exercising its power by resolution pursuant to Iowa Code 364.3 (1). The use of either that word or that phrase by the Davenport City Council would have ended this section 364.3 (1) controversy.

Further, this Court concludes City Attorney Tom Warner should have ensured that the City Council used either “resolution” or an equivalent phrase and then memorialized

¹⁵⁰ *Dillon v. City of Davenport*, 366 N.W.2d at 922 (Iowa 1985).

¹⁵¹ *Sawyer v. Lorenzen & Weise*, 127 N.W. 1091, 1092 (1910).

¹⁵² *Dillon v. City of Davenport*, 366 N.W.2d at 922 (Iowa 1985).

¹⁵³ *Sawyer v. Lorenzen & Weise*, 127 N.W. at 1092 (1910).

¹⁵⁴ *Doe v. New London Community School*, 848 N.W.2d 347, 355 (Noting generally that when many years pass following such a case (interpreting a statute) without legislative response, we assume the legislature has acquiesced in our interpretation.)

that in detailed written minutes. Tom Warner made contemporaneous meeting notes but failed to make formal meeting minutes for approval by the Council.

Yet, the use of the word “resolution” is not required by Iowa Code section 364.3 (1). Case law requires “an expression of the opinion or mind of the council” and “no set form of words is essential if the requirement which calls for its expression is met.”¹⁵⁵ Ultimately, this Court finds by a preponderance of the evidence that during the October 4, 2023, closed session “that all City Council present assented to the proposed settlements” and thereby the Council “intended by its actions to express its consent”¹⁵⁶ to authorize Tom Warner, by resolution, to settle the dispute with Corri Spiegel. This Court concludes that pursuant 364.3(1) Davenport City Council gave that power to Tom Warner in a “manner of such expression (that) is not so informal as to render it nugatory.”¹⁵⁷

(3) Was the City Council required to conduct a formal vote on the resolution?

Judge Cleve found the City Council took no formal vote in the closed session on October 4, 2023. This is distinguishable from *Dillon*, in which during a closed session “[a] definite proposition was put before the members of the City Council, and an individual vote was taken.”¹⁵⁸

Was a formal vote of the City Council required in the closed session on October 4, 2023, for the City Council to exercise its Section 364.3 (1) powers via a resolution? Is a formal vote required for there to be a “mere expression of the opinion or mind of the council concerning some matter of administration coming from its official cognizance . . .,”¹⁵⁹

Dillon cited *Sawyer v. Lorenzen & Weise*, stating,

A resolution does not require a record of the yea and nay vote of the council, and a less formal record of its passage may be sustained than would be required to show the adoption of an ordinance. The record in the instant case is sufficient to show without reasonable doubt that the town council intended by its action to express its consent to the defendant's proposal to establish the saloon in question, and the manner of such expression is not so informal as to render it nugatory. Citing *Cooper v. Nelson*, 38 Iowa, 440 (Iowa 1874).

¹⁵⁵ *Dillon v. City of Davenport*, 366 N.W.2d at 922 (Iowa 1985).

¹⁵⁶ *Sawyer v. Lorenzen & Weise*, 127 N.W.2 at 1092 (Iowa 1910).

¹⁵⁷ *Id.*

¹⁵⁸ *Dillon v. City of Davenport*, 366 N.W.2d at 922 (Iowa 1985).

¹⁵⁹ *Id.*

In *Sawyer*, there also were open meeting minutes reflecting a motion made and seconded that the liquor licenses be granted and that the motion carried.¹⁶⁰ There was an expression of the consent by the council found recorded or embodied in the proper books of the municipality.¹⁶¹ The city council action was the final action on the matter.

The Court concludes that a formal vote by the City Council was not required by Iowa code 364.3 (1) to demonstrate an expression of assent to the settlement, the finding of Judge Cleve. A formal vote by a city council is preferred when a city council exercises a power by the passage of a resolution. Such a vote removes all doubts as to whether and what action the city council took on the matter. This Court relies heavily on the particular facts of this case for this legal conclusion.

As a matter of best practices, however, this Court strongly encourages the use of a formal vote and then documented in writing. A formal vote makes it abundantly clear that the City Council is exercising its power by resolution pursuant to Iowa Code 364.3 (1). It reduces and may eliminate the need for litigation.

(4) Interpretation of the meaning of Consent and Assent

In contrast to *Sawyer* and *Cooper*, but as with *Dillon*, the Davenport City Council exercised its power to authorize Mr. Warner to negotiate a settlement in a closed (non-public) session. During that October 4, 2023, session, the City Council took no formal vote to grant settlement authority. Instead, Judge Cleve noted that all council members “assented.”

Judge Cleve did not describe what he meant by the word “assented.” Iowa Code 364.3 (3) does not state the “method of *passage* of a . . . resolution” by a city council. Section 364.3 (1) does not use or specific words such as “approve, consent, or assent.” Therefore, this court looks to common law interpretation of assent and consent.

The crux of the relationship between Tom Warner and the Davenport City Council is that Warner acted as the authorized agent for the City when he negotiated the Spiegel settlement agreement. The Iowa Supreme Court considered this agency relationship between a city council and its attorney in *Dillon* in the context the city attorney negotiating a settlement agreement.¹⁶² Agency law provides an understanding of the legal meaning of “assent” and “consent” in the context of principal and agent law.

¹⁶⁰ *Sawyer v. Lorenzen & Weise*, 149 Iowa 87, 91, 127 N.W. 1091, 1092 (1910)

¹⁶¹ *Sawyer v. Lorenzen & Weise*, 149 Iowa 87, 91, 127 N.W. 1091, 1092 (1910)

¹⁶² See *Dillon v. City of Davenport*, 366 N.W.2d at 923 (1985) (Generally a city’s attorney would have no authority to compromise claims, invading the domain of the council which has the power to litigate matters)

There is no question that during the October 4, 2023, closed session meeting, the City of Davenport with its city attorney, Tom Warner, present, created a principal and agent relationship for Tom Warner to negotiate a settlement agreement with Spiegel. The issue is whether the City properly created that agency relationship and exercised its power “through passage of a . . . resolution” pursuant to Chapter 364.3(1).

In *Soults Farms, Inc. v. Schafer*, in the context of agency law, the Iowa Supreme Court adopted the Restatement (Third) of Agency, § 1.01, at 17 (2006), which states:

Agency ... results from (1) manifestation of consent by one person, the principal, that another, the agent, shall act on the former's behalf and subject to the former's control and, (2) consent by the latter to so act.”¹⁶³

The Court further stated, “pursuant to this definition, the principal and agent must mutually manifest assent to the agency relationship before the agency is created.”¹⁶⁴

The *Soults Farm* Court cited prior case law requiring “ a manifestation of consent by one person, the principal, . . . and consent by the later to act.”¹⁶⁵ In adopting the Restatement (Third) of Agency § 1.01, at 17, *Soults Farms* supplemented the inquiry from just “consent” to also include “assent.” Thus, I find in *Soults Farms* it is acceptable to use either consent or assent to prove an agency relationship.

That same year, in *Peak v. Adams*, our Supreme Court addressed agency in the context of an attorney’s settlement agreement with a full and final release.¹⁶⁶ The Court further reiterated that, “the Restatement (Third) of Agency states agency as arising ‘when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.’ ”¹⁶⁷

This Court adopts this principle of agency law, which allows the City Council, as principal, to either “assent” or “consent” to create the power of an agency relationship. The Court finding that, “[h]owever, it is apparent from the audio recording that all council members present assented to the proposed settlements” is the sole fact finding on either assent or consent.¹⁶⁸ This Court then concludes that the Davenport City Council properly

and to contract. However, a city attorney may bind the municipality to the same extent as any attorney may bind his client.” (citations omitted).

¹⁶³ *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 100 (Iowa 2011.)

¹⁶⁴ *Id.* at 100.

¹⁶⁵ *Id.* at 100 citing *Pillsbury Co. v. Ward*, 250 N.W.2d 35, 38 (Iowa 1977).

¹⁶⁶ *Peak v. Adams*, 799 N.W.2d 535, footnote 2 (Iowa 2011).

¹⁶⁷ *Id.*, citing *Restatement (Third) of Agency* § 1.01, at 17 (2006).

¹⁶⁸ February 25, 2025, *Ruling and Order on Diercks’s Rule 1.904 Motion*, Page 4.

exercised its power pursuant to 364.3(1) in a resolution to authorize Tom Warner to negotiate the Spiegel settlement because it was “apparent all council members present assented.” The “assent” of the Council to that settlement authority was sufficient.

(5) The City Council resolution of settlement authority occurred prior to the execution of the Spiegel contract.

On October 4, 2023, the City of Davenport City had before it Spiegel’s September 15, 2023, settlement demand. Spiegel demanded \$2,500,000 plus other indirect cash benefits.¹⁶⁹

On October 4, 2023, the voting members of the City Council the council authorized Warner to settle the dispute with Spiegel by “assenting” to it. Judge Cleve noted that assent was “apparent from the audio recording.” There was no trial testimony by the Council members present disputing this.

Throughout this matter, the City and its Council argued it “authorized” the Spiegel settlement. Per Judge Cleve, on October 4, 2023, the City Council “assented” all settlements. This included settlement with Corri Spiegel. This assent was the exercise of power by a resolution, a conclusion based, in part, the unique facts of this case; a city council acting in a closed session to exercise its power to authorize settlement.

On October 4, 2023, the City Council exercised its section 364.3 (1) power for Tom Warner to negotiate the Spiegel settlement. On October 6, 2023, Warner negotiated and executed a settlement agreement with Spiegel. The City Council authorized the settlement before the settlement occurred.

(6). Conclusion regarding authorization of the Spiegel Settlement

Ultimately, this Court concludes that the Davenport City Council properly exercised its power pursuant to Chapter 364.3(1) and by, in effect, a verbal resolution that authorized Tom Warner to negotiate the \$1,600,000 million settlement with Corri Spiegel. The City Council could have done better by using actual language of or to the effect of a resolution. The City Council satisfied the requirement that the settlement “was not so informal to render it nugatory.”¹⁷⁰

The Court relies on the special circumstances that the City Council gave the settlement authority in a closed session rather than in an open session. Judge Cleve had the verbatim audio record of what was said during that special session and made factual findings. Through no fault of the City Council, Mr. Warner failed to complete his tasks of

¹⁶⁹ Plaintiff’s Exhibit 8, Page 6.

¹⁷⁰ *Cooper v. Nelson*, 38 Iowa at 443-444 (Iowa 1874)

preparing the closed meeting minutes. He failed to ensure the typical decisional formalities were used, including a formal vote and a written decision described as a resolution.

The specific content of the closed session are not disclosed due to the attorney-client privilege. Therefore, this Court relies heavily on the findings of Judge Cleve that on October 4, 2023, the City Council “assented” to the Mr. Warner negotiating a settlement agreement.

The Court concludes that on October 4, 2023, the Davenport City Council “assented” or authorized Warner to negotiate a settlement with Spiegel. Pursuant to 364.3(1) the Council properly exercised its power to permit Tom Warner to negotiate a settlement. This City Council’s “assent” to Warner to negotiate a settlement was in effect “an expression of the opinion or mind of the council concerning the matter of administration” of Spiegel’s settlement demand. It constituted an appropriate exercise of the City’s power to settle the dispute with Spiegel through a resolution, albeit in a form that was far from perfect.

The Davenport City Council properly exercised its authority under Iowa Code 364.3 (1) for the Spiegel Settlement Agreement. The Spiegel settlement was not void.

D. Thorndike and Torres Settlement

1. Did the City Council properly exercise its Section 364.3 (1) powers to authorize Tom Warner to negotiate a settlement with Thorndike and Torres?

i. Tom Warner’s September 6, 2023, email to City Council members

On August 31, 2023, Samantha Torres and Tiffany Thorndike each prepared settlement demand letters to the City of Davenport based on personnel complaints.¹⁷¹ Both were placed on leave effective September 1, 2023.¹⁷² On September 6, 2023, Tom Warner sent an email marked “confidential attorney-client privileged” to all City Council members, except for the Council members against whom complaints were alleged.¹⁷³ That email contained important proposed settlement terms.¹⁷⁴ It further stated, “Please let me

¹⁷¹ Plaintiff’s Exhibits 1 and 2.

¹⁷² Plaintiff’s Exhibits 3

¹⁷³ Plaintiff’s Exhibit 4.

¹⁷⁴ *Id.*

know by 5 p.m., Thursday September 7, 2023, if you object to my proposed offer. Otherwise, I will proceed.”¹⁷⁵

No one from the City Council responded to the settlement email from Tom Warner. On September 8, 2023, he prepared and executed final settlement agreements between the City and both Torres and Thorndike.¹⁷⁶ Pursuant to the terms of both settlement agreements, both had a “Last Work Day” of September 8, 2023, and an official separation date of October 13, 2023. The City would not pay any settlement compensation until either at the time of separation on the final regular paycheck or within the pay period following the final regular paycheck.¹⁷⁷ The City paid the final settlements to Thorndike and Torres on October 20, 2023.¹⁷⁸

City Attorney, Tom Warner, acted upon his September 6, 2023, settlement proposal sent via email because no one from the City Council responded to or objected to the settlement. The City Council took no affirmative action to authorize either the Thorndike or Torres settlement.

Pursuant to Iowa Code 364.3 (1) the City Council did not “exercise a power” by passage of a motion, a resolution, an amendment or an ordinance when it failed to respond to an email from its city attorney’s with suggested settlement authority. Not objecting (failure to act) to the settlement authority is not an exercise of a power. The City Council violated Iowa Code 364.3(1) when it allowed Tom Warner negotiate and execute the settlements agreement based on his September 6, 2023, email.

ii. Pursuant to Iowa Code 364.3 (1), did the City Council exercise its powers to authorize the Thorndike and Torres settlement agreements based on the October 4, 2023, closed session action?

As per the Findings of Judge Cleve, during the October 4, 2023, closed session meeting “the Davenport City Council took no formal vote to authorize city attorney Tom Warner to settle with the disgruntled employees. However, it is apparent from the audio recording that all council members assented to the proposed settlements.” The use of the plural “settlements” includes the Thorndike and Torres settlement agreements.

On October 4, 2023, the Council assented to the September 8, 2023, Thorndike and Torres settlements. That assent occurred nearly one month after the signing of the

¹⁷⁵ *Id.*

¹⁷⁶ Plaintiff’s Exhibits 5 and 6.

¹⁷⁷ Plaintiff’s Exhibit 5 and 6, Paragraph 6 (Wages and Lump Sum Payment. . .).

¹⁷⁸ See February 2, 2024, Plaintiff’s *First Amended Petition*, Exhibits 6 and 7; See also April 26, 2024, Defendant’s *Answer to First Amended Petition*, Paragraph 22.

settlement agreements, but before the full performance of the settlement agreement occurred. October 13, 2023, was Thorndike and Torres' separation (from employment) date and October 20, 2023, was their final payment date.

Was the October 4, 2023, Council assent (following the September 8, 2023, settlement agreement) sufficient to cure the Section 364.3 (1) deficiency? Does the fact the agreement was not performed fully until after October 4, 2023, matter? To both questions this Court concludes the answer is "no." The October 4, 2023, after-the fact authorization does not change the legal analysis. The settlement was not authorized when entered into by the Parties.

The City of Davenport, as a home-rule municipality, had the legislative power to settle the disputes with employees, such as Thorndike and Torres. However, the City did not exercise that power pursuant to Iowa Code 364.3 (1). The City Council first needed to authorize Warner to settle the dispute and then Warner needed to settle the dispute. The City and Warner did this in reverse order. Warner settled the claims and then the Council exercised the power to authorize the settlement.

This is not a situation in which the City of Davenport City Council "acted by resolution to specifically authorize the type of contract involved in this case."¹⁷⁹ In fact, the Davenport City Council took no action whatsoever "to exercise any power "to authorize settlement until after Tom Warner, Thorndike, and Torres signed the settlement agreements.

These two settlements are different than in *Dillon*. In *Dillon*, the question was not whether the City of Davenport exercised its power by passage of a resolution, but rather whether that power must be exercised in an open versus a closed session meeting. These three Davenport settlements are also different than in *City of Creston* when that city council exercised its power by a resolution to authorize employee reimbursement for training expenses, but the wrong person from the city signed the agreement. That Court found the reimbursement agreement voidable and allowed ratification of the agreement signed by the police chief.¹⁸⁰

Next, the Court considers the argument of the City of Davenport that any failure to exercise its power by passage of a resolution (Thorndike and Torres) may be cured by Council ratification of the settlement agreements on December 13, 2023.

¹⁷⁹ *City of Creston v. Barney*, 812 N.W.2d 726 (*3 Table) (Iowa App. 2012).

¹⁸⁰ *Id.*

E. December 13, 2023, City Council Ratification of Settlement Agreements

The City Council, its in-house or outside legal counsel may have concluded there was a reason for the Council to take the additional action on the Torres, Thorndike, and Spiegel settlement agreements.

1. December 13, 2023, Council Action in Open Session

On December 13, 2023, the Davenport City Council scheduled and held an open session meeting to ratify the Spiegel as well as the Torres and Thorndike settlements.¹⁸¹ In one combined motion the City Council “ratified” the Spiegel, Thorndike and Torres settlement.¹⁸² Based on his review of the open session audio recording, Judge Cleve concluded that, “[t]he City Council ratified those agreements in open session.”¹⁸³ The audiotape from the open session discloses the public vote and approval of the motion.¹⁸⁴

2. Performance of settlement agreements

The City and Corri Spiegel completed performance of the terms of their settlement after the December 13, 2023, open meeting session.¹⁸⁵ Spiegel’s “official separation date” from the City was January 2, 2024. She received her regular payroll check through her separation date. The City paid Spiegel separate payments of \$600,000 (final payroll check) and \$1,000,000 (on January 2, 2024.)

In contrast, the City and Thorndike and Torres completed the terms of their settlement agreements in October. Thorndike and Torres’ “official separation date” was on October 13, 2023¹⁸⁶ and the City paid their final compensation, including the lump sum settlement, on October 20, 2023.¹⁸⁷

3. Was Ratification of Settlement Agreements Needed and Allowed?

This Court has concluded that the City Council properly exercised its powers pursuant to Iowa Code 364.3 (1) in authorizing the settlement with Spiegel. Therefore, ratification was not necessary for Spiegel, because the City Council approved the Spiegel settlement authority on October 4, 2023, before Warner and Spiegel executed the agreement on October 6, 2023.

¹⁸¹ Defendant’s Exhibit A, Page 7 (agenda) Exhibit B, Page 10 (meeting minutes).

¹⁸² Defendant’s Exhibit B, Page 10-11.

¹⁸³ February 25, 2025, Ruling and Order on Diercks’s 1.904 Motion, Page 5.

¹⁸⁴ Defendant’s Exhibit E, 3:12:02 – 3:12:40.

¹⁸⁵ Defendant’s Exhibit 10, Paragraph 10 (Wages, Lump Sum Payment . . .)

¹⁸⁶ Plaintiff’s Exhibits 5 and 6.

¹⁸⁷ February 2, 2024, Plaintiffs’ *First Amended Petition*, Exhibits 6 and 7; Defendant’s *Answer to First Amended Petition*, Paragraph 22.

This Court, however, has concluded that the City Council did not properly exercise those same section 364.3 (1) powers for the Thorndike and Torres Settlement Agreements. Warner drafted and executed those releases based on the fact the City Council did not respond to his proposed settlement email. There was no Council resolution before either execution or performance of the settlements.

Diercks claims that the Thorndike and Torres settlement agreements are void and cannot be ratified or approved by the City Council after-the-fact. The Davenport City Council counters that even if pursuant to Iowa Code 364.3(1) the action taken by the City Council was insufficient to approve the Thorndike and Torres settlement then the agreements were voidable and City Council's vote on December 13, 2023, legally ratified the settlement agreements.¹⁸⁸ Therefore, analysis regarding void versus voidable agreements and subsequent ratification of settlements is necessary for the Thorndike and Torres settlements.

4. Applicable Law

Both Parties cite *City of Akron v. Akron Westfield Comm. School Dist.*,¹⁸⁹ *City of Creston v. Barney*,¹⁹⁰ and *Brueggeman v. Osceola County*¹⁹¹ on the issue of ratification of a contract or other agreement between local government and a third-party. These cases concern whether a settlement agreement was void or voidable pursuant to Section 364.3(1). This Court addresses this void versus voidable argument, and whether ratification is available.

Brueggeman involved an alleged oral joint agreement (TIF and an urban renewal project) between the city and the county in which the mayor negotiated the joint agreement with the county without a prior city council resolution allowing the mayor to do so.¹⁹² Diercks argued "the city council did not pass a resolution as required by Iowa Code section 364.3(1) authorizing the mayor to enter into that agreement."¹⁹³

Brueggeman is similar to our question, whether the city council gave prior approval for an agreement. In *Brueggeman* there was no doubt the city council approved a resolution, however, that resolution did not authorize the mayor to negotiate an oral agreement with the county. The Court of Appeals noted that it first "must decide whether the city complied with section 364.3(1) before later authorizing the mayor to execute a joint

¹⁸⁸ June 9, 2025, Defendant's Written Closing Argument, Page 5.

¹⁸⁹ *City of Akron v. Akron Westfield Comm. School District*, 659 N.W. 2d 223 (Iowa 2003)

¹⁹⁰ *City of Creston v. Barney*, 812 N.W.2d 726 (Iowa App. 2012)

¹⁹¹ *Brueggeman v. Osceola County*, 954 N.W.2d 764 (Iowa App. 2020)

¹⁹² *Id.*

¹⁹³ *Brueggeman v. Osceola County*, 954 N.W.2d at 767 (Iowa App. 2020)

agreement with the county under section 403.17(4).”¹⁹⁴ If the city’s initial resolution did not authorize the mayor to represent to the supervisors that he had authority to enter into an agreement with the county then the subsequent agreement (based on the mayor’s supposed authority) was void.¹⁹⁵ The Iowa Court of Appeals concluded that “because the error related to the city council’s failure to delegate its authority rather than implementing the joint agreement” that the Urban Renewal agreement with the County was void.¹⁹⁶ The city did not take the necessary action to delegate to the mayor the power to enter into the joint agreement with the county. The agreement was void because it was not authorized.

In *City of Akron*, the city administrator and school board president signed a written contract for the city to buy electricity generated by the school district’s wind turbine.¹⁹⁷ The parties began performance of the contract by buying and selling electricity. However, the city never approved the contract by motion, resolution, amendment or ordinance.¹⁹⁸ The next elected city mayor claimed the wind turbine contract was void under Iowa Code section 364.3(1) because the city council never approved the contract.

There was no question that the City never authorized the contract. It was not authorized and therefore it was void. The sole question for the district court was whether equitable estoppel (based on past performance of the contract to purchase electricity) was a defense to the void contract. The Iowa Supreme Court answered that question in the negative finding estoppel was not a defense to a void contract and the wind turbine contract was void.¹⁹⁹

In *City of Creston*, that city council approved a resolution for new police officers to reimburse the city for police officer training expenses should the officer leave within three years of employment.²⁰⁰ The resolution authorized the mayor and city clerk to execute the agreement. For the police officer in question, the chief of police signed the reimbursement agreement, rather than the mayor or city clerk. The police officer then asserted the contract was void due to a lack of an authorized signature for the city. The officer also claimed the agreement violated the terms of the city ordinance.²⁰¹ The Court of Appeals concluded the reimbursement,

¹⁹⁴ *Brueggeman v. Osceola County*, 954 N.W.2d at 771 (Iowa App. 2020)

¹⁹⁵ *Id.*

¹⁹⁶ *Brueggeman v. Osceola County*, 954 N.W.2d at 773 (Iowa App. 2020)

¹⁹⁷ *City of Akron v. Akron Westfield Comm. School District*, 659 N.W. 2d 223, 225 (Iowa 2003)

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *City of Creston v. Barney*, 812 N.W.2d 726 (*3 Table).

²⁰¹ *Id.*

“[a]greement was not void due to a failure to follow section 364.3 (1) or the city ordinance. This case does not involve an instance where there was a lack of power to enter into a contract. The resolution created the power to enter into the contract. Instead, the power to contract was irregularly or defectively exercised because the contract was signed by the chief of police, who did not have the authority under the resolution to sign the contract.”²⁰²

5. Conclusion regarding Ratification.

i. Spiegel Settlement Agreement

This Court has concluded for the Spiegel settlement that the Davenport City Council met the minimum requirements to exercise its section 364.3 (1) powers during the October 4, 2023, closed session. Therefore, that Council action for Corri Spiegel is not void. This Court continues to rely on the finding of Judge Cleve that the City Council “assented to the proposed settlements” including Ms. Spiegel’s, as evidence that the Council’s action was a sufficient expression of the opinion or mind of the council” for Mr. Warner to negotiate and then sign the Spiegel agreement. Ratification is irrelevant because the agreement is not void.

In the alternative, if on October 4, 2023, the City Council was required to (1) take a formal vote, (2) use the words like “resolution”, or “be it resolved” and/or (3) use other formalities in the exercise of its powers pursuant to 364.3(1) to approve the Spiegel settlement, then that City Council gave the Tom Warner the power to settle with Spiegel but there were irregularities in how the Council executed that power. In that situation, this Court would find the settlement and subsequent agreement is voidable.²⁰³ The Spiegel agreement could be and was ratified.

As noted in *City of Creston*,

A municipal contract which is not void, but merely voidable, may be ratified, may be estopped to deny its validity. Voidable contracts which may be ratified or as to which an estoppel may exist, include those defectively executed in some particular way. Thus, where an officer having power to enter into a contract if authorized by the proper municipal body, makes a contract without such authority the body may ratify the contract.²⁰⁴

²⁰² *Id.*

²⁰³ *City of Creston v. Barney*, 812 N.W.2d 726 (*4 Table) (Iowa 2012)

²⁰⁴ *City of Creston v. Barney*, 812 N.W.2d 726 (*3 Table) (Iowa 2012)(citations omitted).

The elements of ratification are: 1. existence of a principle; 2. an act done by an agent; 3. the principal's full knowledge of material facts; and 4. express or implied intent by the principal to ratify the acts of the agent.²⁰⁵ This Court would find for the Spiegel settlement that the City was the principal, City attorney, Tom Warner, was the agent, the City knew Tom Warner settled the claim, and the City performed its settlement terms.

Although not required to do so, the Davenport City Council also “ratified” the Spiegel settlement agreement in public on December 13, 2023. The City Council conducted an open meeting regarding the Spiegel (and other) settlements and the City formally “ratified” (approved) the settlement by Motion 2023-548.²⁰⁶ Any alleged irregularities (lack use of word resolution, formal vote, and written memorialization) for a voidable contract were fixed through a ratification by the City Council.²⁰⁷

ii. Thorndike and Torres Settlements

The Court of Appeals in *City of Creston* noted that, “[a] fundamental requirement for enforcement of a municipal contract is that the municipality must have exercised its authority to enter in the contract within the scope of powers conferred by statute.”²⁰⁸ Did the City of Davenport, through its City Council, exercise the authority for the Thorndike and Torres settlement agreements?

This Court concludes that on or before September 8, 2023, the City of Davenport did not exercise its power to resolve these disputes by passage of a resolution to authorize Tom Warner to negotiate and execute settlement agreements with Thorndike and Torres. Therefore, Tom Warner lacked the authority from the City to enter into these two agreements on September 8, 2023. These two agreements were executed in violation of Iowa 364.3(1).

Agreements entered into without the power to contract by motion, resolution, amendment or ordinance are void.²⁰⁹ Void contract cannot be ratified.²¹⁰ The settlement agreements between the City of Davenport and both Thorndike and Torres are void and cannot be ratified. Therefore, this Court concludes the purported ratification of those two agreements on December 13, 2023, at the City Council meeting was without legal effect and a nullity.

²⁰⁵ *City of Creston v. Barney*, 812 N.W.2d 726 (*4 Table) (Iowa App. 2012)

²⁰⁶ Plaintiff's Exhibit 14, Pages 10-11

²⁰⁷ *City of Creston v. Barney*, 812 N.W.2d 726 (*3 Table) (Iowa App. 2012)

²⁰⁸ *Id.*

²⁰⁹ *City of Akron, v. Akron Westfield Community School District*, 659 N.W.2d 223 (Iowa 2003)

²¹⁰ *Brueggeman v. Osceola County*, 954 N.W.2d 764, 766 (Iowa App. 2020).

Diercks alleged Thorndike and Torres “should have understood that the Council was first required to approve the settlement prior to the execution of their settlement agreements.”²¹¹ There was no evidence presented on this point. Thorndike and Torres were not trial witnesses. However, actual knowledge is not required because “those who negotiate or enter into contract with a municipality are charged with notice of the limits on the municipality’s authority.”²¹²

Both may have honestly concluded that because Tom Warner, as the city attorney, negotiated the settlement agreements because the City Council authorized him to do so. However, such a conclusion does not change the result because “a contract, unlawful for lack of authority is not rescued by good faith.”²¹³

This Court finds one exception to the legal principle that a void contract cannot be ratified or enforced. It arises in the context of public construction contracts when a taxpayer seeks recovery of sums that a contractor already has been paid.²¹⁴ In *Elview*, even with a void contract, the Court did not order repayment because “[t]he work has been done; it has been accepted; it is of a character which cannot be returned to the contractors and thus place them in status quo.”²¹⁵ The Thorndike and Torres employment settlement agreements are different than a bricks and mortar construction agreement/contract.

VI. Authorization for Settlement Agreements pursuant to the Davenport City Code §2.40.020(L).

First Amended Petition states, in relevant part, that,

COUNT 1 (PETITION FOR WRIT OF CERTIORARI)

51. Clearly established law pursuant to the Davenport City Code prohibits a city attorney from settling a lawsuit for more than fifty-thousand (\$50,000.00) dollars unless the Council has authorized and consented to the settlement. See §2.40.020(L) of the Davenport City Code.
52. §2.40.020 (L) of the City Code states the Corporation Counsel’s settlement authority limitations as follows:

²¹¹ February 2, 2024, Plaintiff’s *First Amended Petition*, Paragraphs 57 and 59.

²¹² *City of Akron, v. Akron Westfield Community School District*, 659 N.W.2d at 225 (Iowa 2003) (citing *Miller v. Marshall County*, 641 N.W.2d 742, 751 (Iowa 2002)).

²¹³ *City of Akron v. Akron Westfield Community School District*, 659 N.W.2d at 225 (Iowa 2003) citing *Marco v. City of Cedar Falls*, 473 N.W.2d 41 (Iowa 1991)

²¹⁴ *Elview Const. Co. v. North Scott Comm. School Dist.* 373 N.w.2d 138, 144 (Iowa 1985)

²¹⁵ *Id.*; See also *Kagy v. Independent School District of West Des Moines*, 117 Iowa 694, 89 N.W.2d 972 (1902)

Settlement of Claims. May expend \$50,000 or less to adjust, settle, purchase or compromise any and all causes of action, accounts, debts, claims, demands, disputes, and matters in favor of or against the City or in which the City is concerned as a debtor or creditor, now existing or which may hereafter arise. City Council consent is necessary for amounts in excess of \$50,000.

74. The law was clearly established on September 8, 2023, that a contract signed by the Davenport City attorney for more than fifty-thousand (\$50,000) dollars is void if it was not first authorized and approved by the Council by a motion or resolution. See §2.40.020(L).

Paragraphs 51, 52 and 74 are alleged in Count I (Writ of Certiorari) of the First Amended Petition. On March 26, 2025, the Court dismissed Count I.

COUNT III – DECLARATORY JUDGMENT

Count III repeated and realleged all prior paragraphs in the First Petition at Law, including dismissed Count I. It added that:

128. The Court should find that Warner exceeded its statutory limitations under §2.40.020(L) of the City Code to execute these three agreements because each settlement exceeded fifty-thousand (\$50,000) dollars in its monetary amount.

Counts 128 is contained in Count III (Declaratory Judgment). On March 26, 2025, the Court granted Tom Warner's Motion for Summary Judgment and dismissed Counts I and III. The basis for the dismissal of Count I was the (1) expired statute of limitations and no judicial or quasi-judicial actions taken. The basis for Count III was the finding of qualified immunity in favor of Warner.

Diercks has no remaining legal claims against Tom Warner and no claims to adjudicate against him. Paragraph 51, 52, and 74 all alleged violations of the Davenport City Code §2.40.020(L), which concerns the authority of corporation counsel to settle cases. This Court address those Warner specific claims for purposes of determining the City's compliance with its Code provision which states, in relevant part, "City Council consent is necessary for amounts in excess of \$50,000."

First, the legal issue of City Code §2.40.020(L) is moot for Thorndike and Torres. This Court already has concluded the Thorndike and Torres settlements are void pursuant to Iowa Code 364.3(1). The settlements reached predate the settlement authority. Even if the City Attorney complied with City Code §2.40.020(L), that does not change this Court's conclusion for the Thorndike and Torres settlements pursuant to Iowa Code 364.3(1).

Second, the legal issue of City Code §2.40.020(L) is not moot for Corr Spiegel. This Court has concluded that the Spiegel settlement is valid pursuant to Iowa Code 364.3(1) because the City assented to the settlement on October 4, 2023, before Tom Warner signed the settlement agreement. Iowa Code 364.3(1) requires the proper exercise power and so does §2.40.020(L). Each has similar but not identical “approval” requirements. Compliance with Iowa Code 364.3(1) does not excuse performance of §2.40.020(L).

Diercks filed a copy of City Code Chapter 2.30 as Exhibit 2 for the Petition and also for the First Amended Petition. However, Diercks did not file a copy of City Code Chapter §2.40. The Court only has §2.40.020(L), which is stated in the Petition. It is unknown what other information exists in that Chapter to shed light on Diercks’s assertion. If City Code Chapter 2.40 has a similar framework as Chapter 2.30, then Chapter 2.40 establishes the office of Corporation Council, its functions, appointment procedure, dismissal, powers and duties generally, additional duties, and responsibilities to the Mayor and council. Finally, Diercks did not provide any definitions or any court rulings interpreting this provision or its application.

In granting Tom Warner’s Motion for Summary Judgment, Judge Fowler reviewed the Diercks’s claims concerning §2.40.020(L).²¹⁶ Judge Fowler considered the Black’s Law Dictionary definition of “consent.” He noted that per that definition consent can be perspective or retrospective in nature.²¹⁷ Judge Fowler concluded that Tom Warner was entitled to qualified immunity for any claim under §2.40.020(L).

§2.40.020(L) does not state how city council consent is given. §2.40.020(L) does not state when council consent is given. Judge Cleve found the City Council met that based on the audio recording “all council members present assented to the proposed settlements.” The City Council has not argued it did not give Warner consent.

§2.40.020(L) does not require an “affirmative vote in an open meeting taken through a motion prior to execution of the contract.”²¹⁸ That is interjecting Iowa Code 364.3(1) requirements into the City Ordinance. This Court looks only to the plain language of the City Code.

Diercks has not met his burden of proof to establish the City Council violated §2.40.020(L) because it never consented to the Spiegel settlement. Judge Cleve found that the Council assent before the fact for Spiegel on October 4 , 2023. Consent and assent are synonymous under Iowa law. Further, after execution, the City ratified the Spiegel

²¹⁶ March 26, 2025, *Ruling and Order Granting on Defendant Thomas Warner’s Motion for Summary Judgment*, Page 7.

²¹⁷ *Id.* at 7-8.

²¹⁸ Plaintiff’ *First Amended Petition*, Paragraph 47.

agreement on December 13, 2023. The Court denies Diercks's claim arising from any alleged violation of §2.40.020(L).

VII. Count III - Declaratory Judgment

Count III of the First Amended Petition is entitled Declaratory Judgment Action and its claim for relief remains against the City and its City Council. Iowa Rule of Civil Procedure (I.R.C.P.) governs declaratory judgment actions 1.1101, et seq. This Court starts with these rules.

I.R.C.P. 1101(Declaratory judgments permitted) states as follows:

Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declaration shall have the force and effect of a final decree the existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

I.R.C.P. 1102 (Construing contract, etc.) states as follows:

Any person interested in an oral or written contract, or a will or whose rights, staff or other legal relations are affected by any statute, municipal ordinance, rule, regulation, contract or franchise may have any question of construction or validity thereof or arising their underdetermined and obtained a declaration of rights, status or legal relations thereof.

In *Dubuque Policemen's Protective Assoc. v. City of Dubuque*,²¹⁹ our Supreme Court held that :

[d]eclaratory judgments are res judicata and binding on the parties. *Id.* The distinctive characteristic of declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words, such judgment does not involve executory or coercive relief. 22 Am. Jur 2d *Declaratory Judgments* §1, at 670 (1988).

What is “executory or coercive relief”? The Court looks to that same interpretive source, *Declaratory Judgments* §2, for clarification.²²⁰ That source states, in relevant part, that “[a] declaratory judgment affords only . . . preventative noncoercive relief, as a

²¹⁹ *Dubuque Policemen's Protective Assoc. v. City of Dubuque*, 553 N.W.2d 603, 606 (Iowa 1996.)

²²⁰ 22A Am. Jur 2d *Declaratory Judgments* §2, (2025)

prophylactic measure,²²¹ . . .” It further states, “[a] distinctive characteristic of a declaratory judgment is that it stands by itself, with no executory process following as matter of course.” *Declaratory Judgments* §2 reflects non-Iowa case law interpretation that “[a] declaratory judgment does not order anything to be done” and “[a] declaratory Judgment does not order any party to act.”²²²

Diercks’ First Amended Complaint, paragraph 136 states, “[t]he Court should order the city to take appropriate action to recoup the unlawfully paid large monetary three payments made to Thorndike, Torres and Spiegel.” Diercks’s Common Prayer for Relief request that the Court: “(L) Declare that the City shall take legal action to claw back all monetary payments made to Spiegel, Thorndike and Torres.”

Diercks requests an Order requiring the City, through its Council, to take affirmative “action” to recoup and claw back the settlement payments. However, a declaratory judgment action does not provide for that legal remedy. This Court is not authorized to grant this remedy because it is “executory or coercive relief.”²²³ This request is denied.

VIII. Matters taken under advisement

A. Diercks’ Motion to Amend to state a claim pursuant to Iowa Code 21.5 (4).

Should this Court grant Diercks leave to amend its Petition at Law to allege that the City of Davenport violated Iowa Code chapter 21.5 (4) by excluding Alderwoman Lee from attending the October 4, 2023, closed session meeting by phone?

In the exercise of its discretion, the Court denies Diercks’ motion for leave to amend. Diercks filed his petition at law alleging a violation of Iowa Code section 21.5 (1)(c), not pursuant to 21.5(4). For the first time at trial, counsel for Diercks alleges this is a brand-new issue brought out by defendants in their case and constitutes an Open Meetings Violation.

Diercks filed his petition at law on January 11, 2023. More than two years passed since that Petition filing. Diercks asserts a brand-new legal theory. Diercks did not plead this claim either in the Petition at law or its First Amendment.

Pursuant to the trial scheduling order, all amendments to pleadings were due no later than 60 days before trial. The original trial date was May 20, 2025. Therefore, the

²²¹ *Id.*

²²² *Id.* See footnote 3.

²²³ *Dubuque Policemen’s Protective Assoc. v. City of Dubuque*, 553 N.W.2d 603, 606 (Iowa 1996.)

deadline for amendments was March 20, 2025. The proposed amendment to add this new claim is untimely.

The Parties agreed upon and filed a discovery plan, including a date for discovery to close. The Parties engaged in written discovery. Each had the right to depose witnesses.²²⁴ Diercks deposed Ms. Lee for use of that testimony at trial, but not until 12 days before trial. If Diercks had deposed Ms. Lee earlier, it would have put Diercks on notice of this potential claim that she allegedly was excluded from the closed session. It is unknown whether Diercks deposed any employees of the City of Davenport, including Brian Krup and attorney Brian Heyer, 60 days or more in advance of trial. These depositions, in turn, could have put counsel for defendant on notice this new legal issue. It could have allowed the parties the opportunity to present the motion for leave to amend within the time frame for making amendments to pleadings.

Diercks relied on trial testimony for his discovery. The failure to engage and inquire during the time allowed for discovery process is not good cause to claim initial discovery during trial. The Court finds no good cause for the delay in discovery and then asserting this new legal issue.

The Court disagrees this that issue was brought out by defendants in their case. Diercks' counsel deposed Ms. Lee on May 9, 2025, just 12 days before trial. Diercks presented that deposition in his case-in-chief, which first raised this issue of telephone access to the October 4, 2023, closed session meeting.

Diercks requested this amendment at the close of the case in chief for the City of Davenport, when Diercks called no further witness, and therefore after all witnesses had testified. The testimony of Mr. Krup and Mr. Heyer may have explained further why Ms. Lee did not participate in the executive session. However, Diercks's basis for the proposed claim is not why she couldn't participate (Council rule) but because of the fact that she couldn't participate. Iowa Code 21.5 (6) concerns a member who is excluded, and generally not why the member is excluded. The sole exception to "why" is if there is a conflict of interest. Only the question of "why" arose during Defendants' case.

Based on the testimony of the witnesses, it is not a given that the inability of Ms. Lee to participate in the closed session by telephone means the City of Davenport excluded Ms. Lee from attending a closed session in violation of Iowa Code Chapter 21.5 (4). Defense counsel argued Ms. Lee never testified she wanted to participate in the closed session. Diercks provides no law on this legal point when a council member is physically

²²⁴ Corri Spiegel testified Diercks's counsel deposed her on May 9, 2025.

absent from a closed session. Furthermore, it is not a fact that this Diercks has standing to pursue that claim on behalf of Ms. Lee or in his individual capacity.

For these reasons, the Court denies the Motion to Amend.

B. Motion to Reconsider Motion for Leave to Amend to add claims related to October 4, 2023, City Council meeting

Counsel for Diercks frames the motion to reconsider on the basis of 1.402. Counsel asserts that the motion for leave to amend is authorized because the claim relates back to the original pleading for purposes of the statute of limitations. Whether a new claim relates back to the original pleading does not address or change the rationale of the Court in denying the Motion to Amend.

This Court denied the April 2025 motion to amend for the reasons stated in the May 9, 2025, Order. Those reasons include, but were not limited to, that Diercks did not file his amendment pursuant to the trial scheduling order, i.e., within 60 days of trial, in tandem with the objections raised by legal counsel for the City of Davenport. As explained in Section III C of this Opinion and Ruling, the October 4, 2023, closed session meeting is not pled in the Petition at Law or its First Amendment. Claims concerning the October 6, 2023, settlement agreement with Spiegel are factually and legally different than for October 4, 2023.

For these reasons, the Court denies the Motion to Reconsider.

IX. Findings and Order of the Court

1. Tom Warner's September 6, 2023, email to the City Council regarding the proposed Tiffany Thorndike and Samantha Torres settlements was not a "meeting" of a governmental body for purposes of Chapter 21;
2. The City Council members did not conduct secret closed session meetings regarding the settlement proposed on September 6, 2023.
3. The September 8, 2023, settlement agreement signed by Tom Warner and between the City and Tiffany Thorndike and Samantha Torres was not a "meeting" of a governmental body for purposes of Chapter 21;
4. Chapter 21 did not require the City of Davenport and its City Council to take final action in an open meeting prior to the September 8, 2023, settlement agreements because there was no closed meeting on that subject.

5. During the October 4, 2023, and the December 13, 2023, closed session meetings, the content of that City Council discussion were singularly focused on impending litigation and litigation strategy pursuant to Iowa Code 21.5 (c).

6. During the October 4, 2023, and the December 13, 2023, closed session meetings the City council did not discuss topics other than impending litigation and litigation strategy pursuant to Iowa Code 21.5 (c).

7. During the October 4, 2023, closed session meeting, all council members present assented to the proposed settlements.

8. The proposed settlements included the Tiffany Thorndike, Samantha Torres, and Corri Spiegel settlements with the City of Davenport.

9. The October 6, 2023, settlement agreement signed by Tom Warner and between the City and Corri Spiegel was not a “meeting” of a governmental body for purposes of Chapter 21;

10. The December 13, 2023, City Council closed session was a “meeting” of a governmental body and did not violate Chapter 21;

11. On December 13, 2023, the City Council, in its closed session meeting, did not discuss the merits of the three settlement agreements, which Tom Warner already signed, or proposed ratification of the agreements, which the Council would later approve. The discussions were for other threatened or impending litigation.

13. The December 13, 2023, City Council open session was a “meeting” of a governmental body and did not violate Chapter 21;

14. Plaintiff is not awarded sanctions, including attorney’s fee and costs pursuant to Iowa Code 21.6(3) (a)-(b).

15. Diercks’ Count II is dismissed.

16. The settlements are not void pursuant to Iowa Code 21.6(3)(c). Further, the public interest in validating the settlements outweighs the public interest in invalidating.

17. Pursuant to Iowa Code 364.3(1), on October 4, 2023, during a closed session the City Council timely exercise its power by assent to authorize Tom Warner to negotiate a settlement agreement with Corri Spiegel based on City Council assent. The settlement occurred after the exercise of power by the City Council under Iowa Code 364.3(1).

18. The settlement agreement with Corri Spiegel is not void.

19. Pursuant to Iowa Code 364.3(1), on October 4, 2023, during a closed session the City Council did not timely exercise its power to authorize Tom Warner to negotiate a settlement agreement with Tiffany Thorndike and Samantha Torres. The settlements occurred before the exercise of power by the City Council.

20. The September 8, 2023, settlement agreement with Thorndike and Torres were void, ultra vires, unlawful and/or illegal under Iowa Code 364.3(1).

21. The Tiffany Thorndike and Samantha Torres settlement agreements are void because the City Council did not exercise its powers under Iowa Code 364.3(1) before the execution of the agreements.

22. On December 13, 2023, in an open session meeting the City Council voted to ratify the Tiffany Thorndike and Samantha Torres, and Corri Spiegel settlement agreements.

23. The actions of the Council on December 13, 2023, to ratify the Tiffany Thorndike and Samantha Torres contracts was void, unlawful, ultra vires, and/or illegal under Iowa Code 364.3(1).

24. The City Council cannot ratify the void settlement agreements with Tiffany Thorndike and Samantha. That ratification is without legal effect and unenforceable.

25. The Court denies Diercks' claims pursuant to Davenport City Ordinance §2.40.020(L). First, the arguments regarding Tiffany Thorndike and Samanth Torres are moot because those settlements are void pursuant to Iowa code 364.3(1). Second, the City Council consented to the Corrin Spiegel settlement agreement.

26. The Declaratory Judgment action does not entitle Diercks to a Court Order in *this case* that the City is required to take affirmative action and claw back the funds paid on the void settlement agreements.

27. Diercks is not entitled to act as a private attorney general to recoup the Tiffany Thorndike and Samantha Torres settlements

28. Diercks is entitled to its costs of suit for Count III.

29. The Court denies Diercks' Motion to Amend to state a claim pursuant to Iowa Code 21.5 (4).

30. The Court denies Diercks' Motion to Reconsider Motion for Leave to Amend to add claims related to October 4, 2023, City Council meeting.

IT IS SO ORDERED.

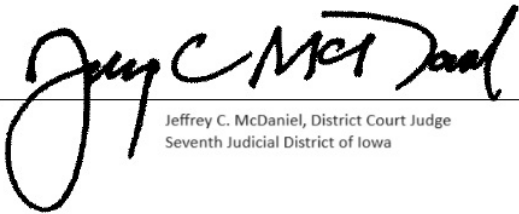


State of Iowa Courts

Case Number
CVCV302775
Type:

Case Title
DIERCKS ALLEN L VS CITY OF DAVENPORT
ORDER FOR JUDGMENT

So Ordered



Jeffrey C. McDaniel, District Court Judge
Seventh Judicial District of Iowa

Electronically signed on 2025-12-23 17:25:15