

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

DR. ALLEN L. DIERCKS)	
Plaintiff,)	Case No. CVCV302775
)	
v.)	
)	PLAINTIFF'S I.R.Civ.P. 1.904(2)
THE CITY OF DAVENPORT, IOWA)	MOTION TO AMEND AND/OR
an Iowa Municipal Corporation, and)	ENLARGE FINDINGS AND
THE CITY COUNCIL OF THE)	CONCLUSIONS DECEMBER 23, 2025
CITY OF DAVENPORT,)	ORDER FOR JUDGMENT
Defendants.)	

Plaintiff Dr. Allen Diercks, through his attorneys, Michael J. Meloy and John T. Flynn, and pursuant to Rule 1.904(2) of the I.R.Civ.P. respectfully requests the Court to amend and/or enlarge the findings of facts and orders in the Court's December 23, 2025 Order for Judgment as follows:

1. The City of Davenport violated Chapter 21, the Iowa Open Meetings Act, when the Davenport City Council conducted business with City attorney Warner via a secret September 6, 2023 e-mail. *See § 21.3(1) "Meetings of governmental bodies"; Plaintiff's Trial Ex. 4; May 20, 2025 Trial Testimony of Thomas Warner, Tr: p. 80, l. 4-15 and the May 9, 2025 Evidentiary Deposition Transcript of Alderwoman Judith Lee, admitted into trial evidence on May 20, 2025, Tr: p. 12, l. 10-25; p. 13, l. 1-15.*

2. The Court should find that the settlement agreement executed by Thomas Warner with City employee Corrin Spiegel on October 6, 2023 was not lawfully approved by the Davenport City Council prior to its execution.

3. Dr. Diercks requests the Court find that Defendants City of Davenport and the Davenport City Council violated Davenport City Code § 2.40.020(L).¹ Sections 21.3(1),

¹ § 2.40.020(L) of the Davenport City Code requires the "Consent" of the City Council for any settlement made by the City Attorney for more than \$50,000.00. All three of these settlements exceeded \$50,000.00.

21.5(3) of the Act and § 380.4(1) of the Iowa Code when the City Council failed to vote on the Spiegel settlement agreement at the October 4, 2023 closed session or before October 6, 2023, the date Warner signed the settlement agreement with former employee Corrin Spiegel. *See Trial Ex. 10, “Spiegel Settlement Agreement.”*

4. The Court should clarify its ruling as to whether “assent” during a closed session, without a council made motion or a council vote, constitutes a valid exercise of power under §§ 364.3(1) and 380.4(1) of the Iowa Code.

5. The Court should find that a City Council “assent” to a settlement does not equate to a City Council vote on any action approving a settlement. A recorded vote is required by the City Council pursuant to § 21.5(3) of the Act and § 380.4(1) of the Iowa Code.

6. The Court should find Defendant Davenport City Council violated § 21.5(b)(1) of the Open Meetings Act by failure to keep any minutes for at least one year, after the October 4, 2023 City Council closed session. *See December 23, 2025 Court ruling that stated: “C.” Spiegel Settlement, “There are no official 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.” Ruling, p. 29, ¶ 4.*

7. Section 21.5(a) of the Act mandates detailed minutes be kept regarding “...all discussion, persons present, and action occurring at a closed session.” Section 21.5(b)(1) states that the detailed minutes and audio recording shall be sealed by the government. The City of Davenport clearly violated the minutes of meeting requirement for any closed session held, by not taking and preserving any minutes of the October 4, 2023 closed session and did not record any vote allegedly taken at the closed session. Section 380.4(1) and § 21.5(a) requires that each council member’s vote on any measure must be recorded.

8. Rule that Defendant City Council violated § 21.5(b)(1) of the Open Meetings Act and must void any action taken by the City Council to approve the Spiegel settlement in the Council's closed October 4, 2023 closed session, because the public interest in voiding the 1.6 million dollar settlement clearly outweighs sustaining the validity of the Spiegel settlement at the October 4, 2023 closed session. *See § 21.6(3)(c), "Enforcement" – "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."*

9. The Court should rule as to whether the December 13, 2023 City Council "Ratification" vote was a lawful ratification of the Spiegel contract.

10. Rule that the Davenport City Council violated § 21.5(3) of the Open Meetings Act which states: *"Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the code expressly permits such actions to be taken in closed session"*. [underlining added]. Defendant City Council never conducted any vote in an open session on either the Spiegel, Thorndike or Torres settlements. Thus, the purported contracts are void.

11. There is no other code section that permits the Spiegel settlement to occur in the October 4, 2023 closed session. The case of *Dillon v. City of Davenport* cited and heavily relied upon by the Court, is clearly distinguishable by the fact the City Council took an actual vote in closed session in *Dillon* to settle that claim. Here, it is uncontroverted that no vote taken at the October 4, 2023 closed session. The Court stated: "Judge Cleve found the City Council took no formal vote in the closed session on October 4, 2023." *See December 23, 2025 Order, p. 34, Sec.*

3, ¶ 1. See also May 9, 2025 Evidentiary Deposition Transcript of Davenport Alderwoman Judith Lee, admitted at trial, Tr: p. 28, l. 12-25; p. 29, l. 1-9, where Alderwoman Lee testified that there was no vote taken in closed session by the Council and that Lee never authorized the Spiegel settlement.

12. However, *Dillon* is distinguishable because *Dillon* finds that a vote must be taken by the Council in order to approve a settlement agreement. In *Dillon*, a vote was taken by the City Council in their closed session to approve that settlement agreement. Thus, *Dillon* complied with and is consistent with § 380.4(1). A council's intent alone, without a recorded vote, does not satisfy § 21.5(3) of the Act, § 364.3(1) or § 380.4(1) of the Iowa Code.

13. Find that the City Council has violated both § 21.5(3) of the Act and § 380.4(1) of the Iowa Code. Section 380.4(1) states: "*Passage of a motion requires a majority vote of a quorum of the council. Each council member's vote on a measure must be recorded. A measure which fails to receive sufficient votes for passage shall be considered defeated.*" [underlining added]. The Council never complied with § 380.4(1) of the Iowa Code because there was never a vote taken by the City Council on any of the Spiegel, Torres and Thorndike settlements.

14. The Court should order that Defendants clawback 1.9 million dollars in taxpayers monies from Spiegel, Torres and Thorndike. The Court has the equitable power to order that any monetary void amounts paid by the City must be clawed back. *City of Akron v. Akron Westfield Community School Dist.*, 659 N.W.2d 223, 226 (2003). (City brought action against school district seeking payment for district's use of city electricity). *Thompson v. Voldahl, Inc.*, 188 N.W.2d 377, 383-4 (Iowa 1971).

15. The Court must clarify whether the Court's determination of voidness of the

Torres and Thorndike settlements is based solely on § 364.3(1) of the Code, independent of § 21.6(3)(c) of the Act. Plaintiff asserts that § 21.6(3)(c) controls because it specifies that the Court shall void any action taken in violation of chapter 21.

16. The Court should declare that § 21.5(3), § 21.6(3)(c) and § 380.4(1) of the Code provides the procedural requirements for passage of a resolution or motion pursuant to § 364.3(1).

17. The Court should award Plaintiff attorney fees pursuant to § 21.6(3)(b) of the Act for Defendants' clear violation of § 21.5(3) and § 21.6(3)(c) of the Act.

18. The Court should find the conduct of the City violated the intent of § 21.1 of the Act – **“Intent – declaration of policy”**.

19. The requested amendments/enlargements are necessary to eliminate the internal ambiguity in the December 23, 2025 Order for Judgment.

20. Plaintiff requests express findings on these issues to clarify the Court's statutory interpretation.

21. The Court should reconsider its order denying Plaintiff's Pre-Trial Motion to Amend Plaintiff's petition to add claims arising from the October 4, 2023 closed session. Plaintiff's Motion to Amend was made again at the close of the trial to conform to the evidence.

WHEREFORE, Plaintiff Dr. Allen Diercks respectfully requests the Court enter an Order to amend and/or enlarge its December 23, 2025 Order for Judgment regarding the above stated issues and find that Defendants violated Chapter 21 of the Iowa Code, § 380.4(1) of the Iowa Code and Davenport City Code § 2.40.020(L) in executing the three settlement agreements. The Court should void the Spiegel settlement agreement and the Court should order Defendants

to clawback the 1.9 million dollars of taxpayers monies. The Court should award attorney fees to Dr. Diercks pursuant to the Iowa Open Meetings Act.

/s/ John T. Flynn

John T. Flynn AT0002597
Brubaker, Flynn & Darland, P.C.
201 W. 2nd St., #400
Davenport, IA 52801
(563) 322-2681
Fax: (563) 322-4810
Johnflynn01@aol.com

/s/ Michael J. Meloy

Michael J. Meloy AT0005306
1111 E. River Drive
Davenport, Iowa 52803
(563) 359-3959
Fax: (563) 359-3953
mike@meloylaw.com

ATTORNEYS FOR PLAINTIFF

Certificate of Service

The undersigned certifies that the foregoing instrument was filed with the Clerk of Court using the ECF (electronic filing system), which will send notification of filing to all parties and attorneys of record herein at their respective email addresses disclosed in the above case, on 1/07/2026.

Signature: /s/ Monica Elles