

SPECIAL CITY COUNCIL AGENDA

NEWTON CITY COUNCIL
City Hall
101 West 4th Street South

SPECIAL MEETING
December 18, 2008
5:30 p.m.

AMERICANS WITH
DISABILITIES ACT
COMPLIANCE

*IS THERE ANYONE PRESENT WHO MAY REQUIRE SPECIAL
ASSISTANCE IN BEING ABLE TO PARTICIPATE IN THIS PUBLIC
MEETING?*

CALL TO ORDER

Roll Call

RESOLUTIONS

1. **Resolution Approving Contract Of Employment For Thomas Wardlow As City Administrator For The City of Newton (No Council Report)**
2. **Resolution Approving Appointment To Vacant At Large City Council Seat (No Council Report)**

ADJOURN

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ADJOURN

RESOLUTION NO. 2008 – _____

**RESOLUTION APPROVING CONTRACT OF EMPLOYMENT FOR
THOMAS WARDLOW AS CITY ADMINISTRATOR
FOR THE CITY OF NEWTON**

WHEREAS, the City of Newton has been utilizing the services of Thomas R. Wardlow as the Interim City Administrator since April 2008; and

WHEREAS, the City of Newton needs to hire a person to be the City Administrator;
and

WHEREAS, the City Council is pleased with the services provided by Mr. Wardlow;
and

WHEREAS, the City Council determines it is in the best interest of the City of Newton to hire Thomas Wardlow as the new City Administrator, with an effective starting date of April 6, 2009, remaining the Interim City Administrator until that time.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newton, Iowa, that the attached Employment Agreement with Thomas Wardlow is hereby entered into and approved and the Mayor is directed to execute the contract on behalf of the City of Newton.

PASSED this 18th day of December 2008.

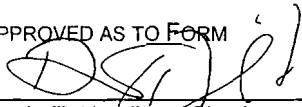
APPROVED this 18th day of December 2008.

Charles Allen, Mayor

ATTEST:

Candice Van Zee, CMC, City Clerk

APPROVED AS TO FORM



Darrin T. Hamilton, City Attorney

**Employment Agreement Between
City of Newton, Iowa
and Thomas R. Wardlow**

Introduction

This Agreement, made and entered into this December _____, 2008 by and between the City of Newton a municipal corporation, (hereinafter called "Employer") and Thomas R. Wardlow, (hereinafter called "Employee") an individual who has the education, training and experience in local government management, both of whom agree as follows:

Section 1: Term

A. The term of this agreement shall be for an initial period of 3 years from April 6, 2009 to April 6, 2012 and Employee may only be terminated during this period for cause. Thereafter, this Agreement shall automatically be renewed on its anniversary date for a 2-year term unless notice that the Agreement shall terminate is given at least 12 months before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. In the event that the Employee is terminated, as defined in Section 9 of this agreement, other than Section 9 subsection 6 (Termination for Cause), the Employee shall be entitled to all compensation as defined in Section 10.

Section 2: Duties and Authority

Employer agrees to employ Thomas R. Wardlow as City Administrator to perform the functions and duties specified in Title 1, Policy and Administration, Chapter 4 Appointed Offices, Article 1 City Administrator, City of Newton Iowa CITY CODE (1993) and to perform other legally permissible and proper duties and functions.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$100,000.00, payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended each July 1 to reflect any Cost of Living increase that is given to all other non-bargaining employees. Any merit increase deemed appropriate should be applied effective each April 15th.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents equal to that which is provided to all other employees of the City of Newton or, in the event no such plan exists, to provide coverage for the Employee and dependents.

B. The Employer agrees to put into force and to make required premium payments for long term disability coverage for the Employee.

C. The Employee may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the Employee, the cost of which shall be paid by the Employer.

D. The Employer shall pay the amount of premium due for term life insurance in the amount equal to what is provided for other non-bargaining employees. The Employee shall name the beneficiary of the life insurance policy.

Section 5: Vacation, and Sick Leave

A. Upon commencing employment, the Employee shall be credited with the sick leave and vacation leave, and longevity already accrued from his past employment as Chief of Police.

The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees.

B. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, not to exceed three times the annual vacation accrual amount, all paid holidays, and other benefits to date as defined in the Employee's Handbook.

Section 6: Automobile

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,200 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond business involved within Jasper and/or Polk Counties.

Section 7: Retirement

1. The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf, for the Employer share required.

Section 8: General Business Expenses

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

2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue

necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

3. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

4. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

5. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
 2. If the Employer acts to amend any provisions of the Title 1, Policy and Administration, Chapter 4 Appointed Offices, Article 1 City Administrator, City of Newton Iowa CITY CODE (1993) pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
Exception: Where state law would mandate a change or where the citizens petition for and an election requires a change in the form of the City of Newton's form of government.
 3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
 4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.
 5. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.
 6. Termination for cause. The following shall constitute termination for cause:
 - a. Employee's theft or dishonesty; or
-

- b. Employee's willful neglect of duty; or
- c. Employee's conviction of a crime or immoral act which would materially damage the reputation of the City or effect the performance of his duties; or
- d. Employee's malfeasance in office; or
- e. Employee's gross incompetence in the performance of his duties, which the Employee has failed to cure or correct after receiving specific written notice from the City of the areas of incompetence and after a reasonable time has been allowed for that cure or correction.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9, other than for termination as defined in Section 9 subsection 6 (Termination for Cause). If the Employee is terminated, the Employer shall provide a minimum severance payment equal to one-year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee. The Employee shall also be compensated for all accrued, vacation time, all paid holidays.

For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A
2. Life insurance as provided in Section 4D
3. Long-term disability as provided in Section 4B
4. Car allowance and any other available benefits as defined in the Employee's Handbook. If the Employee is terminated because of a conviction of a felony, then the Employer is not obligated to pay severance under this section. In no event shall this agreement be construed as requiring severance greater than one year.

Section 11: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 45 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee in April subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 45 days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole Employment except for the following:

A. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee.

Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 16: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Newton Charter or any other law.

A. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other [appointed officials, appointed employees, department heads or general employees] of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: Mayor, City of Newton 111 W. 4th ST. S. Newton Iowa 50208
- (2) EMPLOYEE: Thomas R. Wardlow P.O. Box 1122 Newton Iowa 50208

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

Section 19: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on April 6, 2009.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Date: _____

By _____
Thomas R. Wardlow

THE CITY OF NEWTON, IOWA

Date: _____

By _____
Charles Allen, Mayor

Authorized by Resolution No. 2008 – _____

SEAL

Attest:

By _____
Candice Van Zee, CMC, City Clerk

RESOLUTION NO. 2008 – _____

**RESOLUTION APPROVING APPOINTMENT TO
VACANT AT LARGE CITY COUNCIL SEAT**

WHEREAS, there is a vacancy on the City Council from the at large seat, which term expires January 2, 2010 at noon; and

WHEREAS, the City Council determined it would fill the at large vacancy by appointment, as allowed by Iowa Code Section 372.13(2)(a); and

WHEREAS, notice was timely published as required by Iowa Code Section 372.13(2)(a) to allow for appointment on or before the December 24th time limit; and

WHEREAS, the City Council, went through a process to select the appointment at it's December 18th Special City Council Meeting; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newton, Iowa, that _____ is hereby appointed to fill the current un-expired term of the at large City Council seat, which pursuant to Iowa Code will be until the election results are certified by the county board of supervisors in November 2009.

THEREFORE BE IT FURTHER RESOLVED that the Mayor shall swear in the new City Council member after this Resolution is passed and approved and as soon thereafter as practical to allow the new City Council member to participate in upcoming City Council meetings.

PASSED this 18th day of December 2008.

APPROVED this 18th day of December 2008.

Charles Allen, Mayor

ATTEST:

Candice Van Zee, CMC, City Clerk

APPROVED AS TO FORM



Darrin T. Hamilton, City Attorney