

SPESIA & TAYLOR

MEMO

To: Mayor and City Council
From: Spesia & Taylor
Date: 09/26/2022
Re: Amendment to City Administrator Ordinance

Issue: At the work session of 9/12/22 I was asked to present a redlined amendment to Chapter 2.22 of the City Code, which establishes the Office of City Administrator, along with sections on the appointment, qualifications, removal, and duties of the office. In addition, I was asked specifically to research the statutory references to removal in several of the sample ordinances from other municipalities regarding removal of an administrator

DISCUSSION

By way of a general overview, most of the requested amendments to the current ordinance are not problematic, and they have been made in redline to the attached draft ordinance. However, the suggested change to the "Removal" section is, in my opinion problematic.

As a non-home rule municipality with a Mayor and City Council form of government, Section 3.1-30-5 of the Illinois Municipal Code reserves the exclusive power of appointment of ten enumerated offices to the Mayor with the advice and consent of the City Council. The Council is the Legislative branch and the Mayor is the Executive branch. As with the federal government, the two branches are meant to be separate but equal.

While the City Administrator position is not among ten enumerated offices which can be filled by a Mayoral appointment, with advice and consent of the City Council, there is a catch-all category which allows the appointment of other "officers" necessary to carry into effect the powers conferred upon municipalities. Those offices may be created by the Council, as the Legislative Branch, as it has done with the City Administrator and Finance Director. Once created, the power of appointment resides with the Mayor. 65 ILCS 5/3.1-30-5, a copy of which is attached.

In the City's case, the City Administrator position looks to have been created in 2006 by Ordinance 1401 and it apparently remained the same without amendment since then.

With respect to Removal of a City Officer appointed by the Mayor, the Municipal Code provides that removal authority to Mayor, who must follow certain steps in doing so. That same section of the Municipal Code provides the City Council with the ability to disapprove the removal by a two-thirds vote. 65 ILCS 5/3.1-35-10, which is also attached.

Research into the issue has revealed an Illinois Supreme Court case from 1976, Pechous v. Slawko, 64 Ill. 2d 576. In that case the Supreme Court interpreted prior versions of the Municipal Code and held that a City Council's attempt, by ordinance, to remove an appointed city collector and city attorney was invalid. In so holding, the Court in Pechous noted that the only form of municipal government which authorizes a City Council to exercise powers of appointment and removal is the Commission Form of Municipal Government. The only way that a municipality can change its form of government is by referendum. The Court upheld the trial court's injunction and restored the two City of Berwyn officers to their positions. Although the ruling was in 1976, the municipal code provisions regarding the power of appointment and removal are virtually the same.

You will note that the removal statute indicates that the sole power of removal of appointed officers resides with the Mayor "except where otherwise provided by statute." Given the short turnaround time to provide this legal analysis, we have not had enough time to conduct exhaustive research regarding any other statutory exceptions which may exist, and we are happy to do additional research into the topic if Council desires.

However, Pechous is still good law, and the statutory scheme is clear. A City Administrator, once appointed, acts as part of the Executive Branch, and should be removed only as provided in Section 3.1-35-10.

You will also note that the current ordinance does not have a "salary" section, so I added a section denoting that the City Administrator's salary shall be as set by the City Council, which is similar to the ordinances regarding other appointed officers.