

Memorandum

To: City Commission of the City of Dickinson
From: Christina M. Wenko, City Attorney
Date: 8/18/2023
Re: Appointment City Officers

Summary

The City has received numerous open records requests for various oaths of office for appointed City Officials. Upon review of City records, it appears that many City Officials have not formally accepted appointment through the City Commission or have not signed a written oath of office.

Dickinson Municipal Code § 2-07-04 provides as follows:

Section 2-07-04 Oaths of Appointive Officers

Every person appointed to an appointive office, before entering upon the discharge of duties thereof, shall sign the oath of office prescribed for civil officers and shall file the same with the city administrator within ten days after notice of the election or appointment has been given.

In other words, for individuals that are appointed (as opposed to employees) the technical process involves the City Commission issuing a formal appointment of the position by majority vote, and the appointed individual then signs an oath of office for the position. That oath of office is generally filed with the City, and the position continues until a new individual is appointed.

In practice, the City has been treating appointed positions like they are filled by employees. No formal appointments have been made by the Commission and individuals have not signed a written oath of office. These individuals are still fulfilling required roles, but the process followed is not consistent with Dickinson Municipal Code.

To follow the expectations set forth in Dickinson Municipal Code, the appropriate action is to (1) appoint individuals following a majority vote of the City Commissioner (2) have the appointed individuals sign a written oath of office, and (3) have the City Commission by majority vote ratify the actions of appointed individuals taken prior to the oath of office.

Second, the City may by ordinance list positions as employee positions, which would not require an oath of office and would be consistent with the City's current process.

Oath of Office for Appointed Positions

Dickinson Municipal Code § 2-07-04 provides as follows:

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As a matter of procedure, the City has not followed the procedure set forth in the ordinances. To cure this procedural defect, the appropriate procedure is to have the City Commission, by majority vote, officially appoint individuals to the appointed positions. This includes the city health officer, city administrator, fire chief, chief of police, city engineer and any other officers the City Commission determines are necessary. See Dickinson Municipal Code §2-07-01.

Next, these individuals should sign a written oath of office to be filed with the City for official records. This action may be taken immediately following appointment by the City Commission.

Finally, the City Commission should by majority vote ratify (retroactively approve) actions taken by the appointed officers prior to their official appointment and oath of office. This signifies that the Commission understands that even though the technical process was not followed, these individuals were serving in their respective positions on behalf of the City, and the City retroactively approves any actions previously taken despite any technical defect. This cures any procedural defects in the delay to officially appoint or sign oaths of office.

Procedure Moving Forward

The City may continue to follow the process of having city positions treated as employees instead of appointed individuals (not require appointment from the City Commission or official oath of office). However, the ordinances should be updated to properly document the process the City is using.

The North Dakota Attorney General in an October 5, 2004 opinion addressed the authority of a home rule city to provide for appointment of positions. The Opinion explains that home rule cities, like Dickinson, have the power to rely on their home rule charter to hire appointed positions, or in other words treat the positions as one held by an employee instead of an appointed official. While the City has the power to take this action, ordinances must be updated to properly document that the City is exercising this power through the home rule charter.

Ordinance updates will be required moving forward if the City wants to continue to treat appointed positions as employee positions (not require an oath of office or formal appointment by the Commission). Chapter 2 of the Dickinson Municipal Code must be reviewed to reflect the process the City intends to follow moving forward.