

## **Memorandum**

To: City Commission of the City of Dickinson  
From: Christina M. Wenko, City Attorney  
Date: 8/31/2023  
Re: Appointment City Officers

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In light of recent open records requests for various oaths of office for appointed City Officials, 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 § 2.12.010 provides as follows:

### **Section 2.12.010 Enumerated**

The board of city commissioners at their first meeting after their qualification, or as soon thereafter as possible, shall appoint the following officers: Treasurer; auditor; attorney; one or more assessors; a public health officer; a street commissioner; chief of the fire department; a board of public works; chief of police; one or more policemen, city engineer and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners, by a majority vote, may dispense with the offices which in its judgment are unnecessary and provide that the duties thereof shall be performed by other officers or boards, by the board of city commissioners or by a committee thereof. (Code 1958, § 2-20.) *For similar state law, see NDCC, § 40-15-05.*

NDCC § 40-15-05 provides as follows and is consistent with Dickinson Municipal Code § 2.12.010:

### **40-15-05. Appointive officers in commission cities - Right to dispense with offices.**

At the first meeting after the qualification of its members, or as soon thereafter as possible, the board of city commissioners shall appoint the following officers:

1. A treasurer;
2. An auditor;
3. An attorney;
4. One or more assessors;
5. A city health officer who shall be a physician;
6. A street commissioner;
7. A chief of the fire department;
8. A chief of police;
9. One or more police officers;
10. A city engineer;
11. A board of public works; and
12. Such other officers or boards as the board of city commissioners may deem necessary.

The board of city commissioners by a majority vote may dispense with any appointive office and provide that the duties thereof shall be performed by other officers or boards, by the board of city commissioners, or by a committee or committees thereof.

Furthermore, NDCC § 40-15-05 provides as follows:

**44-01-05. Oath of civil officers.**

Each civil officer in this state before entering upon the duties of that individual's office shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. The oath must be endorsed upon the back of, or attached to, the commission, appointment, or certificate of election. The term civil officer includes every elected official and any individual appointed by such elected official; any individual appointed by the governor and required by section 16.1-09-02 to file a statement of interests with the secretary of state; appointed member of any state authority, board, bureau, commission, and council; and the appointed head of any state agency and agency division, whether the individual serves with or without compensation. Except for an individual appointed to fill a vacancy existing in the legislative assembly, the term does not include any individual receiving a legislative appointment. For purposes of this chapter and chapter 44-05, the term civil officer has the same meaning as public officer.

Because Dickinson's Municipal Code provides for certain appointed positions, those positions should be officially appointed with the officers signing written oaths of office. In practice, the City has been treating appointed positions like they are filled by employees. 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.

In conjunction with advice given by the League of Cities and ND Attorney General's Office, the City may, under its Home Rule Charter, amend its ordinances to state certain positions are employed positions.

The Code changes for this ordinance include distinguish which positions are appointed and which are non-appointed/employed positions.