



MEMO

Mayor's Office

To: Legislative Committee
From: Mayor Penterman
Date: May 16, 2022
Re: City Attorney Position Change

It's been known that the City Attorney position has been utilized more in the recent years than it has in the past. This is a critical role within the City organization. We have been fortunate enough to have some consistency with this elected position over last two seated attorneys. Attorney Davidson has been bringing staff up to speed on how things were done in the past with contracts and other agreements. However, he will be the first to tell you the amount of data that the City Attorney office holds and processes is immense. Attorney Davidson has also noted that the term retirement is no longer stricken from his vocabulary, and he has shared a lot of insight regarding the needs of a truly qualified and experienced attorney to handle the City's ongoing legal needs.

The risks to the City of this role as an elected position are several. There are only four selection criteria for the City Attorney office as an elected position. 1. The individual must have a law degree. 2. The individual must live within the corporate limits of the City of Kaukauna. 3. The individual must complete and file the requisite candidacy nomination papers. 4. The candidate must receive greater than 50% of the popular vote at election. Beyond those four requirements, there is nothing further that the Council, Mayor, staff or the public can do to ensure that the candidate for the position has appropriate professional qualifications or experience. As Attorney Davidson has expressed, number 1, merely having achieved a law degree, is not a sufficient qualifier to rely upon for the chief risk management function of the City.

Under the current code, in the event that Attorney Davidson does not run, or is not re-elected – in any instance when an incumbent is not re-elected, the City loses continuity of the functions of that office and experiences disruption and inefficiency across all departments as the new department head learns the role and the unique characteristics of navigating and advising Kaukauna's leadership. As Attorney Davidson has presented this issue, two year's time is just a probationary period where even a seasoned attorney

may be getting the basic work done, but still learning more about the layers and complexities of the municipality and how it is functioning.

Additionally, if Attorney Davidson does not run for reelection, the criteria for City Attorney must follow the Wis. Stats. § 62.09(12). This gives us the assurance that someone running will at least have a law degree, but provides for no other vetting or selection, other than the popular vote itself. The pool of currently “qualified” individuals that could be candidates is under five. Of those, most or all may not have an interest, and of those who would, their professional qualifications and abilities may or may not be suitable for overseeing the legal affairs of a municipal organization of our size.

The City Attorney role is more of a back office administrative role that works hand in hand with other City staff on a regular basis. To have this role elected runs the risk of continuity with staff and the day-to-day legal matters that happen. With an appointed position, the process and procedures can be better established from person to person when turnover happens. We can't prevent the turnover from happening in a critical City role. However, we can better prepare for the transition and continuation of the procedures, processes, and intel to the next person with an appointed vs. an elected position. Making this position appointed also gives the City the ability to cast a wider net to get a qualified attorney in the role that is selected based on credentials and experience.

If the position remains elected and we run in to a situation where no one runs, and the seat is vacant we can contract a law firm to come in and perform the legal duties on an as needed basis. We will get legal representation, however, the institutional knowledge that an in-house attorney has will be lost in transition. Finally, when the day comes that Attorney Davidson leaves the City, having this position appointed will allow the City to better plan for a transition than it will with it remaining elected. The election only allows for a two-week transition, where with an appointed hire, it would allow us to plan and control the transition.

Finally, when the City went through the process of deciding how to handle the Clerk/Treasurer position back in 2019, we learned that Kaukauna was one of very few municipalities in the state that have an elected City Attorney. We had City of Neenah, Menasha, and Manitowoc come in and give an overview of their structures and allow staff to do a Q&A. Although all three communities had a different org chart, each one of them had the City Attorney as an appointed position.

With that, I suggest we review and consider the organizational advantages of changing the City Attorney position from elected to appointed in 2024 so we can assure we have someone in this role that will put the City in a solid position for years to come. With

this position being in the City Charter it will have to go before the constituents as a referendum. The next election is in November 2022. This will allow for the City to put this referendum question on the ballot with no extra cost to run an election. If we follow a similar Yes or no question as we did for the referendum for the Clerk/Treasurer position the question can be as simple as the below.

If the decision is to have a referendum and the referendum passes, it will have very little impact on the budget. The City Attorney position is a 0.75 Full-time employee (FTE) that has benefits as an appointed position does. If the position is moved to an appointed, it is also suggested that the position go 1.0 FTE. The impact to the budget at this point is an additional 10 hours per week of salary. With the City Attorney Position just getting reelected it gives the City time to plan for the budget impacts over two budget cycles assuming the referendum passes in November 2022. The change will take affect April 16, 2024.

Recommended Action:

Make a motion to add the below referendum question to the November 2022 ballot and hold 2-3 informational sessions for the public to better understand the question ahead of the election.

Referendum Question

Shall the City of Kaukauna, Outagamie County, Wisconsin changes the City Attorney position from elected to appointed?