

ORDINANCE NO. 787

**AN ORDINANCE AMENDING SECTION 2.04.060 OF THE
MILLS MUNICIPAL CODE AND ADDING 2.88.040**

WHEREAS, It is the desire of the City Council of the City of Mills, Wyoming, to remove and revise certain provisions of Title 2 of the Code as it pertains to the retention of Department Heads and the process that pertains to the same, as well as to address the rights of employees to hearings on terminations; and

WHEREAS, Wyoming Statute Section 15-1-103(a)xxxvii provides:

15-1-103. General powers of governing bodies.

(a) The governing bodies of all cities and towns may:

* * *

(xxxvii) In addition to the appointed officers and employees provided by law, establish other positions as are necessary for the efficient operation of the city or town and:

(A) Prescribe duties and rules of all appointees;

(B) Determine working conditions or pay scales and supplementary benefits, as long as those provisions are not in conflict with existing statutes;

(C) During an emergency or special conditions warranting, make additional temporary appointments;

(D) Specify by ordinance that if any person is removed from office for incompetency, neglect of duty or otherwise for cause, the charges against that person shall be specified and the person removed shall be provided an opportunity for a hearing on the charges under procedures established in the ordinance;

and;

WHEREAS, by Charter Ordinance the City of Mills exempted itself from the application of Wyo. Stat. Sec 15-1-103(a)xxxvii; and

WHEREAS, Wyoming Statute Section 15-3-204 provides, as to First Class Cities, which includes Mills, the following:

15-3-204. Appointed officers; removal; conditions for appointive office or position.

(a) Unless otherwise provided by ordinance, the clerk, treasurer, engineer, attorney, fire chief, police chief, municipal judges and department heads as specified by ordinance shall be appointed by the mayor with the consent of the governing body and may be removed by the mayor. All other appointments, except the appointment of members of a board or commission, and removals shall be made by the mayor without consent of the governing body unless consent is required by separate statute. The governing body shall determine the method of appointing members of a board or commission, unless the method of appointing such members is specified by separate statute. The mayor has the power to remove any officer appointed under W.S. 15-1-101 through 15-10-117 for incompetency or neglect of duty.

(b) The governing body, by ordinance or resolution, may specify conditions for any office or position to which a person is appointed under this section including:

- (i) Level or range of salary;
- (ii) A description of the duties and responsibilities of the position;
- (iii) Term of appointment;
- (iv) Requirements for:
 - (A) Promotions;
 - (B) Suspension; and
 - (C) Hearing of appeals from decisions of the mayor to remove or discharge an appointee other than members of a board or commission, after which the governing body may affirm, modify or reverse the decision of the mayor; and
- (v) Other matters which are part of the personnel policies of the city.

and;

WHEREAS, by Charter Ordinance the City of Mills exempted itself from the application of Wyo. Stat. Sec. 15-3-204, and:

WHEREAS, Section 2.04.060 of the Mills City Code reads as follows:

2.04.060 - Appointment of city officials.

(a) The Mayor shall appoint a city administrator, city clerk, city treasurer, city judge, chief of police, fire chief, assistant fire chief, city engineer, city attorney, community development director, and fix their salaries or compensation. The Mayor shall also appoint members of the Planning and Zoning Board, and all members of all other boards and committees created in code. The City Council shall vote to confirm or reject any said appointment, with a majority of the City Council being required in order to approve the appointment. The salary or compensation may be changed from year to year and these appointed officials may be discharged and their employment terminated at any time at the discretion of the Mayor provided, however, that no such termination may occur within the first thirteen (13) months of the term of a new Mayor who did not serve in the prior term without the permission of the City Council.

(b) All other City positions shall be made by the Mayor or his designee. Said positions may be terminated at any time at the discretion of the Mayor or his designee, after the 13th month of his first term. The Mayor may consult the Governing Body on personnel matters when he deems prudent or necessary.

(c) Unless otherwise specifically provided for, all City appointments shall be for a period of four (4) years.

and:

WHEREAS, the Governing Body of the City of Mills, after due and deliberate consideration, is of the view that the thirteen-month prohibition on termination is an awkward restraint on authority of the Mayor and Governing Body, but that the restrictions afforded on termination by Wyo. Stat. Sec. 15-1-103(a)(xxxvii)(D) provide just protection and equity for the employees of the City of Mills, Title 2 of the Mills; and

WHEREAS, the restrictions afforded on termination by Wyo. Stat. Sec. 15-1-103(a)(xxxvii)(D) should apply to all employees, other than those who are subject to contracts which provide specific provisions as to methods of termination and procedures for the appeal of the same; and

WHEREAS, after due and deliberate consideration the view of the City Council is that Sec. 2.04.060 should be revised to read as follows:

2.04.060 - Appointment of city officials.

(a) The Mayor shall appoint a city administrator, city clerk, city treasurer, city judge, chief of police, fire chief, assistant fire chief, city engineer, city attorney, community development director, and fix their salaries or compensation. The Mayor shall also appoint members of the Planning and Zoning Board, and all members of all other boards and committees created in code. The City Council shall vote to confirm or reject any said appointment, with a majority of the City Council being required in order to approve the appointment. The salary or compensation may be changed from year to year and these appointed officials may be discharged and their employment terminated at any time at the discretion of the Mayor provided, however, ~~that no such termination may occur within the first thirteen (13) months of the term of a new Mayor who did not serve in the prior term without the permission of the City Council. that a discharged appointee shall have a right to hearing as allowed for under Wyo. Stat. Sec. 15-1-103(a)(xxxvii)(D) and 15-3-204(b)(v).~~

(b) All other City positions shall be made by the Mayor or his designee. Said positions may be terminated at any time at the discretion of the Mayor or his designee, ~~provided that a discharged appointee shall have a right to hearing as allowed for under Wyo. Stat. Sec. 15-1-103(a)(xxxvii)(D) and 15-3-204(b)(v).after the 13th month of his first term.~~ The Mayor may consult the Governing Body on personnel matters when he deems prudent or necessary.

~~(c) All hearings provided for in this section shall be conducted in accordance with the provisions set forth in Section 2.88.050~~

(d) Unless otherwise specifically provided for, all City appointments shall be for a period of four (4) years.

(e) Nothing in this Section shall be read to be in conflict with any contractual rights afforded to any employee of the City of Mills, or any separate provisions set forth in the City Code for the City of Mills regarding termination of any class or category of employee. In such instances the provisions of such contracts or such separate provisions of the City Code shall govern.

and;

WHEREAS, after due and deliberate consideration the view of the City Council is that Section 2.88.050 should be added providing the following:

2.88.040 – Right to a hearing upon termination.

Any employee of the City of Mills who is terminated from their employment for incompetency, neglect of duty or otherwise for cause, shall have the charges against them be specified and the person removed shall be provided an opportunity for a hearing on the charges under procedures set forth under the Administrative Procedures Act, Wyo. Stat. 16-3-107 et seq, where applicable, including the right of appeal to the District Court. An employee may additionally invoke this provision where the employee asserts that the employee's termination was for incompetency, neglect of duty or otherwise for cause even though not so stated, or where the employee asserts that the termination was otherwise made for an improper reason recognized by law or statute.

In all such hearings the City Council of the City of Mills, Wyoming, shall act as the hearing panel, except where two or more members shall be

conflicted and recused, in which case the Office of Administrative Hearings or a panel stipulated to by the parties shall preside.

WHEREAS, nothing in this Ordinance is intended to repeal or revoke any actions taken by the City of Mills in regard to exemptions from statutes taken under the Home Rule Provisions of Wyoming Statutes and the Wyoming Constitution, but rather are actions taken by the Governing Body in accordance with the rights granted to municipalities.

NOW, THEREFORE, Section 2.04.060 of the City Code of the City of Mills Wyoming is amended to read as set forth above, and Section 2.88.040 is added to the City Code for the City of Mills.

PASSED on 1st reading the ____ day of _____ 2023.

PASSED on 2nd reading the ____ day of _____, 2023.

PASSED, APPROVED AND ADOPTED on 3rd and final reading this ____ day of _____, 2023

CITY OF MILLS, WYOMING

Mayor, Leah Juarez

Councilman, Sara McCarthy

Councilman, Cherie Butcher

Councilman, Tim Sutherland

Councilman, Brad Neumiller

ATTEST:

City Clerk, Christine Trumbull