

Article VII, Section 2 – Appointment and Removal of City Attorney by City Council

Background:

Appointment and removal of the City Attorney by the City Council is a novel issue for the CRC. Currently, the City Manager appoints and removes the City Attorney. The proposed change first appeared in the Resolution No. R-1819-66 drafted in December 2018.

Currently, the City Manager is the only employee of Council. The Charter sets forth the Manager's position as an at-will employee of the Council and sets forth how a City Manager may be removed or suspended. It also outlines the general and special duties and powers of the City Manager.

The Charter empowers the City Manager to “appoint and remove all directors or heads of departments and all subordinate officers and employees in such departments. Further, such appointments and removals shall be made upon the basis of merit and fitness alone, including training and experience in the work to be performed...” Article III, Section (b). Similarly, the City's Personnel Manual sets forth the causes for termination in Section 305.9. Such causes include, but are not limited to:

- (a) Failure to report for work, regularly and promptly, except for causes beyond control of the employee;
- (b) Failure to meet prescribed standards of work, morality and ethics to an extent that makes an employee unsuitable;
- (c) Failure to comply with City rules and regulations;
- (d) Failure to make a reasonable effort to perform emergency service in any position when requested to do so;
- (e) Insubordination (a willful or intentional failure to obey a lawful and reasonable request of a supervisor or an action which constitutes lack of respect or harassment directed toward a supervisor);
- (f) Abuse of, or actions toward or around other employees or the public, either on or off the job, which tend to disrupt the good order and efficiency of the operation of any City department, impair the morale of its employees or impair the respect of the public for the department;
- (g) Horseplay, scuffling, and other acts that could have an adverse influence on the safety or well-being of other employees;
- (h) Theft, destruction or misuse of City property;
- (i) Unauthorized absences, abuse of leave privilege or a three (3) day absence without leave (AWOL)
- (j) Acceptance of a gift, fee, money or other valuable consideration given with the intent of influencing the employee in the performance of their official duty;
- (k) Improper use of authority or official position for personal profit or advantage;
- (l) Use of alcoholic beverages or intoxication while on duty;
- (m) Use, possession, sale, solicitation or transfer of drugs; or

- (n) Controlling interest, directly or indirectly, in any contract or job for the work or for material, or supplies, or the profits thereof, or any purchase made for or sales made by, to or with the City.

Recent City Managers in Norman have had an employment contract that specifies his or her status as an at-will employee and contains severance provisions that apply if the City Manager is fired, but not for cause. The current City Manager's contract is attached for your review.

A chart comparing the status of City Attorneys/Municipal Counselors and the approval and removal process of such persons was provided to the CRC at its September 9, 2019 meeting. Discussion centered around the need for the Council to be able to select its Attorney versus the need to protect the Council's legal advice from politics. Ultimately, the CRC asked that two options be prepared for discussion at the October meeting – one option to add language to the Charter that would make the City Attorney an at-will employee of City Council, similar to the City Manager, and a second option that would make the City Attorney an at-will employee of the City Manager and clarify that the City Council is the client. After discussing the two options, the CRC voted 8 - 3 to recommend Option 1.

Language adopted by the CRC:

Option 1 (modeled after City Manager, Art. III, Section 1):

The City Attorney shall be appointed by Manager; such appointment shall be subject to the approval of a majority of the City Council. The City Attorney may be removed by the City Manager. Council shall by an affirmative vote of five (5) members appoint a City Attorney, who shall serve at the pleasure of the City Council as an at-will employee. He or she shall be chosen by the Council solely upon the basis of his or her qualifications, without regard to age, race, color, religion, ancestry, national origin, sex or place of birth, and need not, when appointed, be a resident of the City or State. No member of the Council shall, during the time for which he is elected, be chosen City Attorney, nor for two years after he ceases to be a member. In case of absence or disability of the City Attorney, the Council may designate some qualified person to perform the duties of the office during such absence or disability. The City Attorney may be removed or suspended at any time, upon an affirmative vote of five (5) members of the Council. Should at least four (4) Councilmembers desire that a majority of Council discuss removal or suspension of the City Attorney, then a notice of such a request shall be filed with the City Clerk, who shall then place an item for Executive Session for that purpose on the Agenda of the next regularly scheduled Council meeting or at a special meeting of the Council called for that purpose. In the event Council should desire to suspend or remove the City Attorney following the Executive Session, an additional item shall be included on the same Agenda of the meeting in which the Executive Session is to be held to consider immediate suspension or removal of the City Attorney. If the Council suspends or removes the City Attorney from office, the Council may provide for the temporary performance of the City Attorney's duties. The action of the Council in suspending or removing the City Attorney shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the Council.