



Council Business Meeting

February 6, 2024

Agenda Item	Resolution for City Recorder Charter Amendment for May election	
From	Sabrina Cotta	Interim City Manager
Contact	Sabrina.cotta@ashland.or.us	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/> Consent <input type="checkbox"/> Public Hearing <input type="checkbox"/> New Business <input type="checkbox"/> Old Business <input checked="" type="checkbox"/>	

SUMMARY

At the October 16, 2023, Study Session staff was directed to provide to Council a timeline and ballot language for charter changes for the spring election.

- Article 3 – Elective Officers and Article 6 – Recorder
 - Remove the City Recorder as an elected official and any article provisions related to the duties of that role in recognition of the substantial reduction in the position’s responsibilities to become solely administrative in nature.

POLICIES, PLANS & GOALS SUPPORTED

Excellence in governance and City Services.

Sustainability through creativity, affordability, and right sized service delivery.

BACKGROUND AND ADDITIONAL INFORMATION

In response to the issue that was raised at the January 19th meeting on whether the Recorder should have a residential requirement please see the attached legal memo. In summary: On par, it is advisable to *not* add in the residential requirement.

Timeline – May 21, 2024, Election Day

December 19, 2023 – City Council consider proposed ballot language

January 16, 2024 – City Council vote on final ballot language resolution

March 1, 2024 – City ballot title filing deadline (SEL 805)

March 21, 2024 – City measure filing deadline (City-SEL 802)

March 25, 2024 – Voters’ pamphlet filing deadline (measure arguments)

Proposed Ballet Language

See attached SEL 802 and Explanatory Statements.

FISCAL IMPACTS

Article 3 – Elective Officers and Article 6 – Recorder: Human Resources will need to conduct a thorough review of job description to include duties and research comparable cities wages. There is potential for long-term salary savings to better align job responsibilities and salary by transitioning this position to a non-elected position.





Council Business Meeting

2024 Spring Election Cost: No fiscal impact to the City of Ashland. The Jackson County elections office has confirmed that when a ballot measure is included in a Primary or General Election in even numbered years, the County Clerk budgets and pays for election costs.

SUGGESTED NEXT STEPS

- I move to approve Resolution 2024-02 A Resolution of the City of Ashland Submitting to the Voters at the May 21, 2024 Primary Election a Proposed Amendment to Article III and Article VI of the Ashland City Charter.

REFERENCES & ATTACHMENTS

- October 16, 2023 Study Session Council Communication
 - SEL802 Recorder
 - Explanatory Statement - Recorder
 - Resolution 2024-02 A Resolution of the City of Ashland Submitting to the Voters at the May 21, 2024 Primary Election a Proposed Amendment to Article III and Article VI of the Ashland City Charter.
 - Draft Recorder job description
 - Legal memo: Issue: Can the City impose a residency requirement upon an employee position of the City Recorder?
-



Council Study Session

October 16, 2023

Agenda Item	Charter Amendment Discussion	
From	Joeseh Lessard	City Manager
Contact	Joe.lessard@ashland.or.us 541-552-2103	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/> Consent <input type="checkbox"/> Public Hearing <input type="checkbox"/> New Business <input type="checkbox"/> Old Business <input type="checkbox"/>	

SUMMARY

Over time the City’s operational requirements have changed creating a need to update sections of the City Charter. At the request of Council, staff has reviewed prior Charter Commission recommendations and current internal processes finding two areas for addressing within the charter that relate to its following articles:

- Article 14 – Chief of Police: Powers and Duties, Section 2
- Article 3 – Elective Officers and Article 6 – Recorder

Staff recommends, due to operational needs, that Council begin consideration of placing two ballot items on the upcoming spring ballot to:

- 1) Update the language in Article 14, Section 2 allowing the Chief of Police to designate an officer to attend City Council meetings and act in his/her stead as Sergeant-at-Arms; and
- 2) Remove the City Recorder as an elected official and any article provisions related to the duties of that role in recognition of the substantial reduction in the position’s responsibilities to become solely administrative in nature.

If the Charter amendment to the Recorder’s office passes, a City staff member would take on the City Recorder role, aligning it more closely with the evolving nature of the position, which over time, has transitioned from one that primarily involved discretionary functions to one predominantly focused on administrative responsibilities. The Recorder position will be under the supervision of the office of management to ensure timeliness and professionalism befitting for the City of Ashland.

POLICIES, PLANS & GOALS SUPPORTED

Excellence in governance and City Services.

Sustainability through creativity, affordability, and right sized service delivery.

BACKGROUND AND ADDITIONAL INFORMATION

Article 14 – Chief of Police: Powers and Duties, Section 2

This article states: “The Chief of Police shall attend all meetings of the City Council and perform the duties of the Sergeant-at-Arms of that body...” Staff has determined this language in the Charter is too restrictive and recommends the Charter be amended to state *The Chief of Police, or their designee*. This wording would allow the Chief of Police the discretion to make operational decisions for the department based on needs and staffing and allow greater flexibility to the Chief of Police regarding work schedule.





Council Study Session

Article 3 – Elective Officers and Article 6 – Recorder

These articles outline the Recorder as an elected position, term, powers and duties, vacancy, and absence guidelines. Staff has determined the following:

- Ashland is unique in that no other City recorders in the area are elected.
- The duties of this position have changed over time particularly in regard to financial duties. The Recorder no longer conducts audits nor performs fund accounting for the City.
- The City is in need of a trained position filled by an individual who can complete records requests & management, records retention, licensing needs and council duties in a thorough and timely manner.
- This position as an elected officer presents considerable risk to the City of job duties are unfulfilled or completed in a manner not in accordance with state law.
- The job duties of the recorder do not need to be done by an elected official.
- The League of Oregon Cities did research in 2016 and found that Ashland, Elgin, Jacksonville and Prescott were the only cities in the entire state that had elected recorders.

FISCAL IMPACTS

Article 14 – Chief of Police : Powers and Duties, Section 2: No fiscal impact

Article 3 – Elective Officers and Article 6 – Recorder: Human Resources will need to conduct a thorough review of job description to include duties and research comparable cities wages. General research was conducted on recorder wages and the following was found:

City	Population	Low Salary	High Salary	Elected
Lake Oswego	41,148	\$3,843	\$4,671	No
Keizer	39,376	\$3,154	\$4,114	No
McMinnville	34,515	\$3164	\$4,747	No
Tualatin	27,914	\$3098	\$3935	No
West Linn	27,420	\$3295	\$4500	No
Klamath Falls	22,501	\$2589	\$3748	No
Ashland	21,642	\$3846	\$3846	Yes
Milwaukie	21,305	\$3108	\$3966	No
Sherwood	20,22	\$3760	\$4769	No

Along with ensuring efficiencies within the office by transitioning the position to a professional position, there is potential for long-term salary savings to better align job responsibilities and salary by transitioning this position to a non-elected position. More research will need to be done if this position is removed from the charter to determine role and responsibilities and commensurate salary.





Council Study Session

2024 Spring Election Cost: No fiscal impact to the City of Ashland. The Clerk of the City Council Pro Tem has contacted the Jackson County elections Office and confirmed that when a ballot measure is included in a Primary or General Election in even numbered years, the County Clerk budgets and pays for election costs.

SUGGESTED NEXT STEPS

Provide staff with direction to return to Council with potential timeline and ballot language of potential charter changes to be considered for spring election ballot measures.

REFERENCES & ATTACHMENTS

- City Charter – Article 3 Elective Officers
- City Charter – Article 6 Recorder
- City Charter – Article 14 Chief of Police: Powers and Duties

ARTICLE 3 Elective Officers

Section 1. Elective Officers The elective officers of the City shall be: a Mayor, Recorder, six (6) Council Members, five (5) Park Commissioners and a Municipal Judge. (Charter amendment 5-23-78)

Section 2. Qualifications All elective officers except the Municipal Judge shall be residents and qualified voters in the City. (Charter amendment 5-23-78).

Section 3. Salaries Any change in the amount of the present compensation received by elective officers, except for the Recorder and Municipal Judge, shall be submitted to the vote of the people; however, the salary of the elected Recorder shall be in the amount being paid in 1974 and be adjusted starting with the fiscal year 1974-75 in the same percentage as the average salary adjustments of the other supervisory employees and department heads of the City of Ashland; further, the salary of the Municipal Judge will initially be the same as for the year 1978-79 and thereafter to be adjusted in the same percentage as the average salary adjustment of the other supervisory employees and department heads of the City of Ashland. (Charter amendment 5-23-78).

Section 4. Vacancies An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony; other offense pertaining to his/her office, or unlawful destruction of public records; resignation; recall from office or ceasing to possess the qualifications for the office; or, in the case of the Mayor or Council Member, upon his/her absence from the City for thirty (30) days without the consent of the Council or upon his/her absence from meetings of the Council for sixty (60) days without like consent, and subsequent declaration of the vacancy by a two-thirds affirmative vote of the Council.

A vacant elective office in the City shall be filled within sixty (60) days by the Council electing some qualified person to fill such vacancy. The appointee's term of office shall begin immediately upon appointment and shall continue until a successor, elected at the next biennial election, takes office for the unexpired term. The Council shall have the power, by a two-thirds affirmative vote, to expel any member of the Council for disorderly conduct in Council or inattention to duties. No Council member shall be expelled without notice and a hearing by the Council.

Section 5. Term The term of all elective officers shall begin the first day of January following their election.

Section 6. Interest in City Contracts During the term of office, no elective officer shall violate any provision of the State of Oregon Code of Ethics as contained in ORS Chapter 244. (Amended by vote 11-8-94.)

ARTICLE 6 Recorder

Section 1. Term The Recorder in office at the time this Charter takes effect shall continue in office until the end of his/her term of office as fixed by the Charter of the City in effect at the time this Charter is adopted. At each biennial general election held in 1970, and every fourth year thereafter, a Recorder shall be elected for a term of four (4) years.

Section 2. Powers and Duties The Recorder shall act as Clerk of the Council and shall keep plain and correct records of all business and proceedings of the Council. He/she shall maintain a file of all papers presented to him/her officially, and safely keep all files, records and papers of the corporation pertaining to his/her office, and these shall be open to the public. At the expiration of his/her term of office, he/she shall turn over to his/her successor any and all records, books, and papers pertaining to said office.

The Recorder must draw all orders for the proper payment of monies against the proper funds that have been appropriated by the City Council, and, together with the Mayor, sign the same. He/she may make periodic audits of all City accounting records.

The Recorder, shall, as soon as the Council shall make a general levy of the taxes for the city, certify the same, together with any and all special benefits and assessments then due, to the Clerk of the County Court.

The Recorder shall record, in a book to be kept for that purpose, all ordinances and resolutions passed by the City Council, and the same shall be signed by the Recorder, as well as signed and approved by the Mayor therein.

Section 3. Vacancy A willful absence of the Recorder from the City for more than thirty (30) days without the consent of the Council, carelessness or inattention to the duties of the Recorder, shall be grounds for the Council to declare the office vacant; and it may fill such vacancy in the same manner as vacancies in the office of Council members are filled.

Section 4. Absence In the Recorder's absence, the Mayor shall appoint a Clerk of the Council Pro Tem who, while acting in that capacity, shall have all the authority and duties of the Recorder.

Notice of Measure Election

City

SEL 802

rev 01/18 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Notice

Date of Notice

Name of City or Cities

Date of Election

Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Question 20 words which plainly phrases the chief purpose of the measure.

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; **or**

→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached?

Yes

No

Authorized City Official Not required to be notarized.

Name

Title

Mailing Address

Contact Phone

By signing this document:

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; **and**

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

EXPLANATORY STATEMENT FOR COUNTY VOTERS' PAMPHLET

NAME OF PERSON RESPONSIBLE FOR CONTENT: _____

NAME OF ORGANIZATION PERSON REPRESENTS, IF ANY: _____

BALLOT TITLE CAPTION: _____

MEASURE NUMBER: _____

(Explanatory Statement Shall Be Typed)

WORD COUNT TOTAL: _____

THE TOTAL WORD COUNT CANNOT EXCEED 500 WORDS.

SIGNATURE OF PERSON RESPONSIBLE FOR THE CONTENT OF THE EXPLANATORY STATEMENT

DATE

INSTRUCTIONS FOR EXPLANATORY STATEMENT FOR COUNTY VOTERS' PAMPHLET

1. Explanatory Statement **must be typed**.
2. Explanatory Statement will not be returned for proofreading.
3. The word total for an explanatory statement must not exceed 500 words or numbers. If an explanatory statement exceeds the 500 word/number limit, the county clerk shall end the statement at 500 words or numbers.
4. An explanatory statement must be signed by the person responsible for the content of the argument.

RESOLUTION NO. 2024-02

**A RESOLUTION OF THE CITY OF ASHLAND SUBMITTING TO THE VOTERS
AT THE MAY 21, 2024 PRIMARY ELECTION A PROPOSED AMENDMENT TO
ARTICLE III AND ARTICLE VI OF THE ASHLAND CITY CHARTER**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,
RESOLVES AS FOLLOWS:

SECTION 1. The City Council submits to the qualified voters of the City the question of approving or rejecting an amendment to the Ashland Municipal Charter to remove the elected position of the Recorder from the city charter and provide for the city manager to appoint the position according to standards and duties to be set forth in ordinance.

SECTION 2. The City Council refers this question to the ballot of May 21, 2024.

SECTION 3. The City Recorder shall cause to be delivered to the Elections Officer of Jackson County, Oregon, the attached ballot measure notice, not later than 61 days prior to the election. The Election Officer is requested to give notice to the electorate of the City that the election shall be conducted by mail, pursuant to Oregon law;

SECTION 4. The City Recorder shall give notice of the election as provided in the laws of the State of Oregon and the Charter and ordinances of the City of Ashland.

SECTION 5. The ballot title for this measure is set forth in Exhibit A, attached.

SECTION 6. The proposed amendment to the city charter is set forth in Exhibit B, attached.

SECTION 7. The City Attorney is authorized to alter the language of the ballot title only for the purpose of complying with any rules, procedures, and practices of the Election Officer of Jackson County to implement the requirements of Oregon law, but shall make no changes to the Charter amendment language in Exhibit B without the consent of the Council.

This resolution is referred to the electors of the city of Ashland for approval at the Primary Election in Jackson County, set to occur on May 21, 2024.

This resolution is effective upon signing by the mayor.

ADOPTED by the City Council this ____ day of _____, 2024.

ATTEST:

SIGNED and APPROVED this ____ day of _____, 2024,

Alissa Kolodzinski, City Recorder

Tonya Graham, Mayor

Reviewed as to form:



Douglas M McGeary,
Acting City Attorney

EXHIBIT A
(Ballot Title)

Proposed Amendment to the Ashland City Charter removing the Recorder as an Elective Officer.

Shall the Ashland City Charter be amended to remove the Recorder and Recorder Duties as an elected position from the City Charter?

A "Yes" vote for this measure amends the City Charter to allow for the City of Ashland to hire an individual with appropriate training and skill to fill the Recorder position.

A "No" vote for this measure maintains the existing language in the City Charter which outlines the sole qualifications for being elected Recorder as residing within City limits and current registration to vote.

(Explanatory Statement)

A "Yes" vote for this measure amends the City Charter to allow for the City of Ashland to hire an individual with appropriate training and skill to fill the Recorder position to include public records retention law, public meeting law, and election process. Currently there are no minimum professional skill qualifications for this position. The only qualifiers are residing within City limits and being a registered voter. The recorder is an administrative position that requires decision to be made based on knowledge, skills, and abilities outside of the number of votes garnered in an election.

A "No" vote for this measure maintains the existing language in the City Charter which outlines the sole qualifications for being an elected Recorder and fulfilling the necessary job duties as being a resident and registered voter within the City of Ashland.

EXHIBIT B

The following amendments are proposed to the Ashland City Charter. Only these articles and sections as delineated herein are amended by this Resolution. Except for otherwise proposed amendments to the Charter by separate resolution and Ballot Title , all other language in the Charter shall be unchanged.

Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are ~~bold lined through~~, and additions are **bold underlined**.

ARTICLE 3 Elective Officers

Section 1. Elective Officers The elective officers of the City shall be: a Mayor, ~~Recorder,~~ six (6) Council Members, five (5) Park Commissioners and a Municipal Judge.

Section 2. Qualifications All elective officers except the Municipal Judge shall be residents and qualified voters in the City.

Section 3. Salaries Any change in the amount of the present compensation received by elective officers, except for the ~~Recorder and~~ Municipal Judge, shall be submitted to the vote of the people; ~~however, the salary of the elected Recorder shall be in the amount being paid in 1974 and be adjusted starting with the fiscal year 1974-75 in the same percentage as the average salary adjustments of the other supervisory employees and department heads of the City of Ashland; further, t~~ **The salary of the Municipal** Judge will initially be the same as for the year 1978-79 and thereafter to be adjusted in the same percentage as the average salary adjustment of the other supervisory employees and department heads of the City of Ashland.

Section 4. Vacancies An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony; other offense pertaining to his/her office, or unlawful destruction of public records; resignation; recall from office or ceasing to possess the qualifications for the office; or, in the case of the Mayor or Council Member, upon his/her absence from the City for thirty (30) days without the consent of the Council or upon his/her absence from meetings of the Council for sixty (60) days

without like consent, and subsequent declaration of the vacancy by a two-thirds affirmative vote of the Council.

A vacant elective office in the City shall be filled within sixty (60) days by the Council electing some qualified person to fill such vacancy. The appointee's term of office shall begin immediately upon appointment and shall continue until a successor, elected at the next biennial election, takes office for the unexpired term. The Council shall have the power, by a two-thirds affirmative vote, to expel any member of the Council for disorderly conduct in Council or inattention to duties. No Council member shall be expelled without notice and a hearing by the Council.

Section 5. Term The term of all elective officers shall begin the first day of January following their election.

Section 6. Interest in City Contracts During the term of office, no elective officer shall violate any provision of the State of Oregon Code of Ethics as contained in ORS Chapter 244.

PART 2. ARTICLE 6 Recorder

Section 1. Term The Recorder in office at the time this Charter takes effect shall continue in office until the end of his/her term of office as fixed by the Charter of the City in effect at the time this Charter provision is adopted. ~~At each biennial general election held in 1970, and every fourth year thereafter, a Recorder shall be elected for a term of four (4) years. Upon the expiration of the Recorder's term, if any, the City Manager is granted the authority to appoint a Recorder to fulfill the powers and duties of this position. The selection of the Recorder will be based on their education, experience, and other qualifications ensuring that the individual is suitably qualified for the position of City Recorder as defined by ordinance.~~

~~Section 2. Powers and Duties. The Recorder shall act as Clerk of the Council and shall keep plain and correct records of all business and proceedings of the Council. He/she shall maintain a file of all papers presented to him/her officially, and safely keep all files, records and papers of the corporation pertaining to his/her office, and these shall be open to the public. At the expiration of his/her term of office, he/she shall turn over to his/her successor any and all records, books, and papers pertaining to said office. The Recorder must draw all orders for the proper payment of monies against the proper funds that have been appropriated by the City Council, and, together with the Mayor, sign the same. He/she may make periodic audits of all City accounting records. The Recorder, shall, as soon as the Council shall make a general levy of the taxes for the city, certify the same, together with any and all special benefits and assessments then due, to the Clerk of the County Court. The Recorder shall record, in a book to be kept for that purpose, all ordinances and resolutions passed by the City Council, and the same shall be signed by the Recorder, as well as signed and approved by the Mayor therein.~~

~~Section 3. Vacancy A willful absence of the Recorder from the City for more than thirty (30) days without the consent of the Council carelessness or inattention to the duties of the Recorder, shall be grounds for the Council to declare the office vacant; and it may fill such vacancy in the same manner as vacancies in the office of Council members are filled.~~

~~Section 4. Absence In the Recorder's absence, the Mayor City Manager shall appoint a Clerk of the Council Pro Tem who, while acting in that capacity, shall have all the authority and duties of the Recorder.~~

JOB DESCRIPTION



OVERTIME: Exempt Non-Exempt

JOB TITLE:	City Recorder
CLASSIFICATION:	Confidential
DATE:	January 9, 2024

PURPOSE OF POSITION:

Under general supervision of the City Manager, this position acts as the Clerk of the City and performs administrative duties, program support and specialized work as the City Recorder to maintain the custody and management of official City records. Oversees public records retention and management for the City. Ensures compliance with applicable laws governing public meetings, retention of official records and documents, and local elections. Responsible for the coordination and appropriate noticing of City Council meetings and standing committee meetings and prepares and distributes agendas and informational packets. Oversees documentation of ordinance and Charter changes; interact with the public and public officials from the City and other agencies on public records requests and elections inquiry. Performs other related duties as required.

SUPERVISORY RESPONSIBILITIES:

May directly supervise subordinate administrative/clerical staff if necessary; however, supervision is not a regular function of this position. May also provide training and orientation to Committee and Commissions members, elected officials, and departments regarding records management.

ESSENTIAL JOB FUNCTIONS:

The duties listed below are only intended as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the classification if the work is similar, related and/or a logical assignment to the classification.

Serve as the ex-officio Clerk of the Council and attend all meetings of the Council; oversees distribution of Council agenda and packets, assists departments with preparation of packet documentation and reviews agenda for completeness.

Works with the City Manager and City Attorney to ensure compliance with public meetings law; drafts, edits and submits council meeting minutes for approval and posting. Attend Council meetings to take minutes of the meetings, conduct roll-call votes; set up and strike the meeting room before and after meetings, and obtain Mayor's signature on ordinances, resolutions and contracts. Keep track of ordinance and resolution numbers; and assign numbers to new ordinances and resolutions. Produce minutes of the meeting, capturing actions and deliberations of the City Council.

Function as the City Elections Officer, responsible for process of preparing, overseeing and filing of all pertinent election materials for candidates, ballot measures and required finance/campaign reports in local elections in cooperation with the Jackson County officials responsible for conducting elections; works with candidates and newly elected officials providing election information and proper paperwork. Educate city staff on restrictions on political activity as public employees.

Oversee City-wide records management and retention; maintain, coordinate and distribute approved municipal code, ordinances and resolutions to appropriate commissions and staff. Prepare, record and post council approved code, ordinances and resolutions.

Perform administrative support functions for City boards and commissions. Ensure that the Ashland Municipal Code (AMC) is updated to reflect ordinance enactments and made available electronically.

Provide information to the public regarding public records, and review requests for information to determine, in coordination with the City Attorney, legal obligations for release of information under Oregon Public Records Law. Respond appropriately to the public regarding requests for information and provide cost estimates for requests that involve extensive staff research for records.

Prepare, issue and record all cemetery deeds; maintain docket of City liens and prepare lien reports as requested; maintain file of legal notices; keep City Charter available to the public. Process liquor license requests.

AUXILIARY JOB FUNCTIONS:

Maintain proficiency by attending training, conferences and meetings, and reading professional literature. Maintain work area in a clean and orderly manner and follow all safety rules and procedures established for work areas.

PREFERRED MINIMUM QUALIFICATIONS:

Education: Associate degree or two years of post-secondary study in business administration, public administration or related degree; and/or equivalent combination of education and experience sufficient to successfully perform the essential job functions. Current technical/professional knowledge of complex principles, methods, standards and techniques associated with the scope of work of a recognized profession, such as:

- Knowledge of laws, rules and regulations concerning the operation of municipal government, parliamentary procedures, and public meeting laws.
- Knowledge of administrative principles, practices, research methods, systems and operations, excellent written, verbal and interpersonal communications skills,
- Use of computer and other office equipment effectively and efficiently
- Proficiency in use of Microsoft Office applications

Experience: Five (5) years of administrative and records management experience

Desirable Additional Qualifications:

Municipal Clerk (CMC) or Master Municipal Clerk (MCC) certification, Notary Public

SPECIAL REQUIREMENTS

Possession or the ability to obtain and retain, a valid Oregon driver's license with an insurable driving record by the time of appointment. Notary Public (possession of or ability to obtain within 1 year of appointment).

PHYSICAL DEMANDS OF POSITION:

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this classification. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1) Mobility: frequent sitting for long periods of time; occasional bending or squatting. (2) Lifting: frequently up to 10 pounds; occasionally up to 25 pounds. (3) Vision: constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. (4) Dexterity: frequent use of keyboard; frequent repetitive motion; frequent writing; frequent grasping, holding, and reaching. (5) Hearing/Talking: frequent hearing and talking, in person and on the phone. (6) Emotional/Psychological: frequent decision-making and concentration; frequent public and/or coworker contact; occasional working alone.

WORKING CONDITIONS:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this classification. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.



Work is performed in a typical office environment and is subject to moderate noise. Attendance at meetings outside of the normal work schedule is required.

CITY MANAGER APPROVAL _____ **Date** _____



Memo

To: City Council

From: The Legal Department, written by Carmel Zahran

Date: 1.29.23

Issue: Can the City impose a residency requirement upon an employee position of the City Recorder?

Fundamental Right To Travel:

Background: An individual has a fundamental right to migrate from state to state and to be treated equally after moving into a new state. This right does not have textual origins. Rather, the fundamental right to travel developed from case-law – like the right to privacy. Residency requirements implicate the fundamental right to travel, on the rationale that residency restrictions can deter someone’s freedom of travel. If a restriction is classified as “**durational**,” the court applies strict scrutiny. For strict scrutiny, the burden is on the government to prove the law is necessary to achieve a compelling governmental interest. If a restriction is classified as “**bona fide**” the court will apply rational review. For rational review, the burden is on the challenger to prove that the law is rationally related to a legitimate government interest.

For context, examples where residency requirements were found invalid include: one-year residency to receive full welfare benefits, one-year residency to vote in state. As you might imagine, there is an array of different scenarios where the state might want to impose residency requirements, and each scenario will have to be evaluated on a case-by-case basis. *Perez v. Pers. Bd. Of City of Chicago*, 690 F. Supp. 670, 673-675 (N.D. Ill. 1988) summarized the standard of review nicely, which is still the standard of review:

“The Supreme Court has recognized that residence requirements by their very nature implicate the right to interstate travel. Thus, the government must justify any statute, regulation or policy that denies an individual a benefit or privilege on account of the individual’s status as either a non-resident or new resident. To aid the analysis, the Supreme Court classifies residence requirements as ‘bona fide’ or ‘durational,’ viewing the latter as potentially a greater burden on the right to travel and accordingly warranting closer scrutiny.

A bona fide residence requirement restricts the receipt of certain benefits, services or privileges to current residents and is constitutional if it can withstand ‘minimum scrutiny’, that is, the government can prove that the requirement is rationally related to a legitimate policy goal. The Supreme Court has invariably upheld bona fide residence requirements:

A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residences are enjoyed only by residents...”

Durational residence requirements, on the other hand, differentiate between new and old residents, requiring an individual to reside in a jurisdiction for a specified period of time before becoming eligible for a benefit or service. Durational requirements in effect penalize during the qualifying period those individuals who have recently traveled to and established residence in the state or municipality. *Dunn v. Blumstein*, 405 U.S. 330, 334 (1972). If the benefit or privilege is so substantial that its denial to new residents in a jurisdiction deters individuals from taking up

residency in that jurisdiction, the residence requirement significantly impacts interstate travel and runs afoul of the Constitution if the government cannot prove that the requirement is necessary to meet a compelling state interest (strict scrutiny).

Application: Applied here, the residency restriction falls within the durational leg of the analysis. Bona fide restrictions pertain more to benefits. While someone can always make the strict scrutiny argument, I believe this restriction would be evaluated under the rational basis tests. A lot of the other durational cases involve individuals who were restricted from an employment opportunity after they had proven their residency (e.g. 1-year or 3-year, 60-day proof of residency before eligible). Here, the proposal is arguably less severe since it doesn't put on that additional time requirement.

This case mimics *Walsh v. City & Cnty of Honolulu*, 423 F. Supp. 2d 1094 (2006), which appears to be the main 9th circuit case that addresses this question. Similar to the proposal by Council, this case required an applicant be a resident.

In *Walsh*, the court found that Hawaii's condition of employment fell was subject to rational basis review and granted a preliminary injunction against the city (the defendants). However, the *Walsh* court did not find that any of Hawaii's stated reasons for the residency restriction were rationally related to the statute. Rather, the court surmised that the restriction was to prevent migration to Hawaii (there were previous cases to lend this view). Additionally, some of the arguments the court considered but dismissed as being insufficient were: (1) loyal, committed employees to prevent quick turnover, (2) non-residents being more likely to leave after hire, (3) a general inability by the City to articulate the practical difference between residents and non-residents, (4) the rationale that residents better understand local issues since the residency requirement had no rational connection to whether the applicant had the capacity and fitness, (5) environmental concerns.

Other considerations: Another argument that residency has been brought up as been under an Equal Protection, disparate impact argument (sometimes called an unintentional discriminatory practice). The issue would be if the residency requirement would have a disparate impact a protected class (e.g. *NAACP v. Town of Harrison*, 907 F.2d 1408). Disparate impact arguments rarely come up in residency cases (they are more reserved for housing discrimination cases). There is a significant work-up involved in litigating those cases and the low-hanging fruit argument is outlined above. But, in theory, someone could look into it if it turns out that the practice has an unintentional discriminatory effect.

Conclusion: On par, it is advisable to *not* add in the residential requirement. Someone can always make the strict scrutiny argument. But beyond that, it strikes me that the arguments made for mandating that the recorder be a resident are similar to what the *Walsh* court said was not rationally related to a legitimate state interest. The *Walsh* case was slightly different in that it came on the heels of other Hawaii cases that tried to restrict migration to the islands – which, I can only imagine involved some deeper political interests. Here, Ashland does not have that same stain. Nonetheless, the arguments are the same and the court found them insufficient.

Another point of emphasis is that the other areas of employment where residency is given a radius is specifically related to that person's type of employment (i.e. utility and public safety employees) so that they can have a quick response time in the event of an emergency. The restriction, however, is not for residency. The fact that the recorder job is largely administrative (except for council meetings) weakens the argument that residency is rationally related to the restriction.