

Council Business Meeting

November 17, 2020

Agenda Item	A Resolution to Clarify How the Transition to A City Manager as Chief Executive of City Government Will Occur Pursuant to Charter Revisions	
From	David Lohman	City Attorney
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SUMMARY

Approval of the attached proposed Resolution No. 2020–22 would provide legislative guidance for dealing with a circumstance which was not specifically addressed in the May 2020 voter-approved amendments to the Ashland City Charter mandating transfer of certain administrative responsibilities from the elected position of Mayor, with Council approval, to a new, appointed position of City Manager and abolition of the position of City Administrator. That unaddressed circumstance is that the City will have an Interim City Administrator on December 31, 2020, as opposed to an officially-appointed *permanent* City Administrator. Under judicial scrutiny, this deviation from the precise terms in the Charter amendments most likely would be found to have no practical impact on the transition the voters approved. Council guidance on how to deal with this unanticipated circumstance probably would obviate any uncertainty or resort to judicial interpretation.

POLICIES, PLANS & GOALS SUPPORTED

N/A

PREVIOUS COUNCIL ACTION

The October 20, 2020 Council business meeting included approval of First Reading of Municipal Code amendments to achieve conformance with the recent Charter amendments. In that night’s subsequent discussion of other possible implications of the Charter amendments, a Council majority appeared to informally agree with the clarifications proposed in Resolution No. 2020–22.

BACKGROUND AND ADDITIONAL INFORMATION

Section 10 of Article VIII–A of the Charter amendments says the individual “employed as Ashland City Administrator on the effective date of this Article VIII-A shall be the city manager....” Section 7 of the same article says the Council must appoint a manager pro tem when the office becomes vacant. Sections 7 and 10 do not specifically address the City’s likely situation on the effective date of the amendment, when an Interim City Administrator probably will be filling the position slated to be replaced by the City Manager position. Logically and practically, the Interim City Administrator on December 31, 2020 would become the Interim City Manager (that is, the City Manager pro tem) on January 1, 2021. Approval of this resolution would confirm that practical outcome and avoid the possibility of a confusing leadership gap as the new year begins.

Another change made necessary by the Charter amendments is the need to amend particular Department Heads’ employment contracts to transfer certain administrative responsibilities of the Mayor, the City Council, or the City Administrator to the person filling the position of City Manager starting January 1, 2020. These contract amendments necessarily would require agreement from the affected Department Heads, but preliminary discussions suggest no changes in the substantive terms, or the end dates of those contracts would be needed or proposed.

Finally, Article VIII-A, Section 9 says, “No person related to the manager by consanguinity or affinity within the third degree shall hold any appointive office or employment with the city except with express city council approval.”

Presuming Adam Hanks is filling the position of City Manager (as Interim City Manager) on January 1, 2021, Council approval is required for his spouse, Cindy Hanks, to continue in the position of City of Ashland Accounting and Audit Manager, which reports to and is directly supervised by Finance Director, Melanie Purcell.

FISCAL IMPACTS

N/A

STAFF RECOMMENDATION

The City Attorney recommends that Council approve proposed Resolution No. 2020-22.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- *I move to approve proposed Resolution 2020-22.*
OR
- *I move to approve proposed Resolution 2020-22 with the following changes...*
OR
- *I move to postpone indefinitely consideration of Resolution 2020-22.*

REFERENCES & ATTACHMENTS

Attachment 1: Resolution No. 2020-22

Attachment 2: Charter amendments approved in the May 2020 election.

1 **RESOLUTION NO. 2020-22**

2 A RESOLUTION TO CLARIFY HOW THE TRANSITION TO A CITY MANAGER AS
3 CHIEF EXECUTIVE OF CITY GOVERNMENT WILL OCCUR PURSUANT TO CHARTER
4 REVISIONS TO BECOME EFFECTIVE JANUARY 1, 2021.

5 **RECITALS:**

6 A. In May of 2020, Ashland voters approved amendments to the City Charter establishing a new
7 position of City Manager as the chief executive and administrative head of the City of Ashland;
8 and

9 B. The new charter provisions are clear as to the transition from City Administrator on
10 December 31, 2020 to the new position of City Manager on January 1, 2021, but leaves room for
11 uncertainty about the transition when the occupant of the position of City Administrator on
12 December 31 is the Interim City Administrator and a person has not been formally appointed to
13 fill the position of City Manager (whether as “permanent” City Manager or as City Manager Pro
14 Tem by January 1, 2021; and

15 C. By taking action now, the City Council wishes to make clear it interprets the recent Charter
16 amendments to mean that the person serving as Interim City Administrator on December 31,
17 2020 will become the City Manager Pro Tem on January 1, 2021 and shall use as a working title
18 “Interim City Manager”; and

19 D. The existing employment contracts of Department Heads O’Meara, Gray, Molnar and
20 Mc Bartlett and Parks Director Black must be amended to reflect the new Charter provisions’
21 transfer of administrative responsibilities for employment decisions from the Mayor and City
22 Council to the person filling the position of City Manager after January 1, 2021; and

23 E. Under the new Charter provisions, if Adam Hanks is filling the position of City Manager on
24 January 1, 2021, City Council approval is required for Cindy Hanks to continue to be employed
25 in the position of City of Ashland Accounting and Audit Manager reporting to and directly
26 supervised by Finance Director Melanie Purcell; and

27 F. The City Council in place after the January installation of newly-elected Councilmembers may
28 repeal and replace this resolution if the Council wishes to undertake alternative means for
29 achieving compliance with the recent Charter amendments.
30

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

3 SECTION 1. The City of Ashland City Council does hereby interpret Sections 7 and 10 of
4 Article VIII-A of the City Charter to become effective on January 1, 2021 to mean that the
5 Interim City Administrator on December 31, 2020, will become the City Manager Pro Tem
6 (“Interim City Manager”) effective January 1, 2021.

7 SECTION 2. In conformance with Sections 4 and 8 of Article VIII-A of the new City Charter
8 provisions, the person filling the position of Ashland City Manager after December 31, 2020
9 shall have full, undivided authority to appoint, supervise and remove all non-elected Department
10 Heads (excepting City Attorney and the Parks Director) and to enter into amendments of such
11 Department Heads’ employment contracts then in effect. A City Manager Pro Tem temporarily
12 filling the position of Ashland City Manager, however, may appoint or remove Department
13 Heads only with Council approval.

14 SECTION 3. In conformance with Article VIII-A, Section 9 of new City Charter provisions to
15 become effective on January 1, 2021, the City of Ashland City Council hereby expressly
16 approves the continued employment of Cindy Hanks as City of Ashland Accounting and Audit
17 Manager on terms consistent with the provisions of the City Charter and City Code and state and
18 federal employment law, notwithstanding her spousal relationship with Adam Hanks while he is
19 filling the position of City Manager.

20 SECTION 4. This resolution is effective upon adoption.

21 ADOPTED by the City Council this _____ day of _____, 2020.

22 ATTEST:

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25
26 Melissa Huhtala, City Recorder

27 SIGNED and APPROVED this _____ day of _____, 2020.

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30 John Stromberg, Mayor

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Reviewed as to form:

David H. Lohman, City Attorney

CHARTER AMENDMENT

APPROVED MAY 5, 2020

The following amendments are proposed to the Ashland City Charter. Only these articles and sections therein are amended. All other language in the Charter shall be unchanged.

ARTICLE IV - Mayor

Section 2. Powers and Duties. The Mayor is the political head of the city government. He or she shall exercise careful supervision over the general affairs of the City and, with the City Council, over the City Manager and City Attorney, as well as other appointive officers as may be created by this charter. Appointive officers are those city employees who are hired by and report directly to the mayor and Council. The Mayor shall make a report to the Council and the citizens of Ashland on the state of the city at or as soon as practical following the first Council meeting of each calendar year.

VIII-A – CITY MANAGER

Section 1. The office of City Manager is established as the chief executive and administrative head of city government. The City Manager is responsible to the Mayor and Council for the proper administration of all city business. The city manager will assist the Mayor and Council in the development of city policies, and carry out policies established by ordinances and resolutions.

Section 2. A majority of the Mayor and Councilors must appoint and may remove the city manager. The appointment must be made without regard to political considerations and solely based on education and experience with local government management.

Section 3. The City Manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the Council. The Council must fill the office by appointment as soon as practicable after the vacancy occurs.

Section 4. The City Manager must:

1. Attend all Council meetings unless excused by the Mayor or Council;
2. Make reports and recommendations to the Mayor and Council about the needs of the city;
3. Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, and other city decisions;
4. Appoint, supervise and remove all non-elected department heads and other city employees, except as follows:

- a. The Ashland Parks and Recreation Commission shall have responsibility for appointing, supervising, and removing its employees, subject to state law, Ashland Municipal Code, written mutual agreements between the City Council

and Ashland Parks and Recreation Commission, and formal, written City administrative policies.

- b. Employees who report directly to the mayor and City Council shall be appointed, supervised, and removed by the mayor and City Council and shall be termed appointive officers.
5. Organize city departments and administrative structure, except that the City Manager shall have no responsibility for the supervision of the City Attorney's Office or the Ashland Parks and Recreation Commission;
 6. Prepare and administer the annual city budget;
 7. Administer city utilities and property;
 8. Encourage and support regional and intergovernmental cooperation;
 9. Promote cooperation among the council, staff and citizens in developing city policies, and building a sense of community;
 10. Perform other duties as directed by the council;
 11. Delegate duties to any city employee, in a manner consistent with the provisions of the City Charter, the Ashland Municipal Code, state and federal employment law, and collective bargaining agreements.

Section 5. The City Manager has no authority over the Mayor or Council or any other elected official, or the City Attorney;

Section 6. The City Manager and other employees designated by the council may sit at council meetings but have no vote. The City Manager may take part in all council discussions.

Section 7. When the City Manager is temporarily disabled from acting as manager or when the office becomes vacant, the Council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove department heads only with council approval.

Section 8. Neither the Mayor nor a member of the Council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the manager in the making of any appointment or removal of any officer or employee or in the purchase of services and supplies; or attempt to extract any promise relative to any appointment from any candidate for City Manager. Nothing in this section shall be construed, however, as prohibiting the Council from fully and freely discussing with or suggesting to the manager anything pertaining to city affairs or the best interests of the city.

Section 9. No person related to the manager by consanguinity or affinity within the third degree shall hold any appointive office or employment with the city, except with express city council approval.

Section 10. This Article VIII-A shall be effective on January 1, 2021, if approved by the electors of Ashland in a primary or general election prior to that date. The individual employed as Ashland City Administrator on the effective date of this ARTICLE VIII-A shall be the city

manager as described above and shall remain so employed until such time as he/she resigns or is terminated by the Council. The position of city administrator is abolished.

ARTICLE XIII - Appointive Officers

Section 1. Appointive Officers. The Mayor, with the confirmation by the Council, shall appoint a City Manager, City Attorney and such other officers as the Council deems necessary. The Council may combine any two or more appointive offices. (Charter amendment 5-23-78)