

# Council Business Meeting

October 4, 2022

<b>Agenda Item</b>	City Attorney's Report on City Council/City Manager Authority Respecting Park and Recreation	
<b>From</b>	Doug McGeary	Acting City Attorney
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## **SUMMARY**

This item is a report to the City Council on an opinion from the Acting City Attorney. The opinion is in response to requests by the City Manager (see attached February 14, 2022, Memo) and the Parks and Recreation Director to determine what authority the City Manager has to direct management over employees delegated to the Parks and Recreation Director. This issue is complicated by the City's Charter and historical practices related to operations and management of the Parks and Recreation operations.

## **PREVIOUS COUNCIL ACTION**

Discussed during the City Council Study Session on September 19<sup>th</sup>, 2022.

## **FISCAL IMPACTS**

The report is informational in nature and is not anticipated to have a direct fiscal impact.

The City has been informed by its insurance carrier, City/County Insurance Services (CIS), that the designation of two government bodies having oversight of City operations, the City Council and the Park Commission, requires the adding of a \$100,000 liability insurance deductible *per occurrence* for *employment related* claims to the City's property and casualty insurance policy. Previously, the insurance deductible was a total aggregate of \$125,000 a year for all City claims (see attached July 1, 2022, Memo on the Property and Casualty Insurance Premium Increase). This liability deductible change has been identified by CIS as necessary so long as Park and Recreation operations retains its autonomy from City oversight but is not an actual separate legal entity. CIS views this as an additional risk and liability for coverage. CIS must be prepared to defend both the City Council and the Park Commission with separate legal counsel related to Park and Recreation Department employment claims. This change raises the possibility of increased City cost for the added deductible obligation for each City employment related claim.

## **REFERENCES & ATTACHMENTS**

Attachment 1: Memo City Manager/Council Authority respecting Parks Commission

# Memo

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DATE: 09-15-2022  
TO: Joe Lessard, City Manager  
Michael Black, Parks Director  
FR: Douglas M McGeary, Acting City Attorney  
RE: City Manager/Council Authority respecting Parks Commission

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## BACKGROUND:

The City Charter vests the City Council and the Mayor with all powers of the City. Charter VIII §1. The Charter, however, further establishes two separate commissions within the City organization, the "Ashland Park Commission" and the "Ashland Recreation Commission", which are elected and have their own powers. These powers include "control and management" of dedicated city park lands and open space park program lands, and of "park funds" which shall be expended "for beautifying and improving the City's parks." Because the individuals comprising the boards for both bodies are the same, the City has historically come to treat them as a combined commission.

The historic relationship between the City Council (the "City") and the two commissions appears as one of allowance under a Mayor/City Administrator or "strong mayor" form of governance until recently changed in the Charter. That is, the Mayor and City Council has allowed or authorized the Park or Recreation Commissions, as the Park and Recreation Commission, to oversee Park and Recreation operations. This deference is natural given the likely tendency for an elected official to accede to the specific charge of another elected body, particularly one that is expected to accumulate expertise in its assignment.

The City Charter of Ashland was amended by public vote in 2020 adding Article VIII-A to the City Charter that established the position of City Manager to oversee City business operations. This change transitioned the City to a Council-Manager form of government. This governance model is a manager centric or "strong manager" form of government often adopted by larger municipalities or more complex organizations. The City's Chief Executive Officer (CEO) responsibilities, once assigned to the mayor, are now assigned to the City Manager in line with a CEO in the private sector to make operational and management decisions for the organization. The successes or failures of the City Manager, therefore, is more singularly dependent upon the officer's skills and abilities to respond to Mayor and Council policy decisions and control operations of the entire operation.



The language of the City Manager amendment, however, includes language that exempts oversight and management of specific "employees" from management oversight by the City Manager:

“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.”  
Charter Article VIII-A §4 (4)a. (Emphasis added)

This section of the amendment also provides that the City Manager “shall have no responsibility for the supervision of the . . . Ashland Parks and Recreation Commission.” Charter Article VIII-A §4 (5). The above exemption provides that employees assigned to the "Park and Recreation Commission" are most notably determined by or under the City Council’s plenary authority to adopt provisions of the Ashland Municipal Code (AMC), set City administrative policies, adopt City Council resolutions, or enter into memorandums of understanding (MOUs) with the Park and Recreation Commission.

Except for the language in Article VIII-A of the Charter establishing the City Manager position, there are no other references to a "Park and Recreation Commission" in the City Charter. The two Charter established commissions are part of the City organization. They are not created as independent or separate from the City as legal entities. And in that respect, there is no specific power in the Charter for either the Park or Recreation Commission to hire employees. However, the City has created through ordinance the power for the Ashland Recreation Commission “to appoint or designate some individual to act as recreation director. . . , and such other personnel as the [Recreation] Commission deems proper.” AMC 2.16.040. This Director’s office has historically answered to the two Charter established commissions.

Before the adoption of City Manager Charter provision, where respective management or operations commingled or remained ambiguous between the City and commissions, the entities found a need to form several MOUs to separate and apportion their respective share of several responsibilities to the overall organization. One main MOU has been amended over time until its last iteration dated August 19, 2014 (the “2014 MOU”) was created prior to the change to a City Manager form of governance. The 2014 MOU predominantly leaves authority over Park and Recreation employees and park land with a Park and Recreation Commission while the agreement assigns human resource functions to the City.

#### ANALYSIS:

A. INTRODUCTION: The 2020 adoption of Article VIII-A in the City Charter establishing the City Manager position has presented a question over what degree the Council through its City Manager may have administrative authority over the city's Park and Recreation Department and its employees. As discussed above, the Commission has historically had operational oversight of the City's Park and Recreation Department under portions of the AMC and in MOUs between the City Council and the Commission. With the hiring of a City Manager, responsibilities for the overall organization are realigned and the language within the new 2020 Charter provision must be read given plain meaning to its text, but also informed by the history of agreements that have been created and are currently used by the City and Commission.



B. **TEXT AND CONTEXT.** Under a plain text reading of the Charter, the 2020 Charter amendment does not appear to otherwise change the form of the City’s government, although the creation of the City Manager's office was clearly designed to consolidate management functions into a chief executive-type position for the City in general and specifically to appoint, supervise and remove any non-elected department heads or other city employees.

C. **LEGISLATIVE HISTORY.** To further define or interpret the text and context of the 2020 Charter amendment, the voter's pamphlet can also be considered for evidence. An overall inspection of that document indicates that the 2020 City Manager amendment was to maintain the status quo otherwise created by the Charter and developed over time.

The pamphlet indicates that the City Manager is given no extra supervisory authority over the Commission. Although neither the Park Commission nor the Recreation Commission are entities specifically authorized under the City Charter to operate independent of the City or to hire or oversee employees.

D. **GUIDANCE BY ORDINANCE AND MUTUAL UNDERSTANDINGS.** Based on the City Council’s allocation of responsibilities in the 2014 MOU, the City Manager, like the City Administrator before, currently does not have authority to manage or oversee the employees of the Park and Recreation Department. Importantly and consistent with the Charter, the MOU also provides for this Commission to develop and recommend a proposed budget to the City thereby ultimately leaving decisions of adopting the final budget with the City. It is also important to note that other MOU’s between the City and Commission, or City Council adopted resolutions have established and apportioned responsibilities between the parties for other City controlled properties, programs or funds that do not fall under the definition of park lands or park funds.

Technically, the City has not established the usual structures within the City’s organization or administrative code which would clarify and enable the two City Charter established commissions to administer their chartered functions or the MOUs assigned oversight responsibilities. The City Charter does not create a Park and Recreation Department or assign its oversight to either the Park Commission, Recreation Commission or a Park and Recreation Commission. The Park Commission is defined in the City Charter simply as “The certain board . . . perpetuated and continued as five (5) members.” The charter does assign “control and management” of dedicated park lands, open space park program lands and park funds to the Park Commission but not employee or department oversight. The “control and management” language, in essence, assigns asset level oversight responsibilities to the Commission, a role not usually connected with operational management in the Council-Manager form of local government or in the private sector. There are also no Ashland Municipal Code (AMC) ordinance provisions establishing a Park and Recreation Department and its oversight, as is the case for other City departments. Finally, it is the MOUs adopted by the City Council related to Park and Recreation operations that, somewhat confusingly, allocates oversight responsibilities to either the Park Commission, simply to “Parks”, to the technically undefined “Park and Recreation Commission” or to the Park and Recreation Director to whom the Park and Recreation Commission has “delegated management responsibility.”



Compounding the lack of organizational clarity or structure related to the Park and Recreation operations, is that in limited circumstances the City Manager has been given, by City Charter, operational authority over Park Commission/Park and Recreation Commission matters to ensure performance of certain budget and asset management functions necessary to the City. These limited functions include situations involving the administration of the citywide budget for compliance and financial solvency, and management responsibility for non-park property or facilities under the Park and Recreation Departments assigned responsibilities.

The Charter has established the separate charges for the City Manager, the Park Commission and the Recreation Commission. The electorate was presented with a decision to create the City Manager position with the likely understanding that the roles between these would continue substantially unchanged but also under or subject to the plenary authority of the City Council, historically exercised to assign management oversight of Park and Recreation operation responsibilities in MOUs. Currently, it is through these ordinances and agreements that the City Manager's ultimate authority can be understood. The City Council, however, retains its historic right to adopt or alter ordinances, and enter into or continue/discontinue MOU agreements.

Through ordinances and separate agreements, the City Council and Park Commission have integrated functions and agreed upon budgeting and the allocation of employees. Over time these ordinances and separate agreements seem to have satisfied the electorate that the sharing of responsibility for various management and operational functions, whether or not the efforts fall specifically within the charge of any particular office or Commission, may be appropriate and can continue. This sharing of responsibility does not change simply due to the decision made to pass the 2020 Charter amendment establishing the office of the City Manager. Regardless, the City Council retains the right, as exercised historically, to make the allocation of Park and Recreation operational oversight under its plenary authority. This right is confirmed by the language of Article VIII-A that grants the right of the Park and Recreation to oversee 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."

Where the allocation or assignment of management responsibility is now questioned or in doubt, the City Council can make changes to ordinances, if necessary, to further empower the City Manager and affect Commission operational changes that the City finds necessary in the interest of the City. Alternatively, without the existence of certain standing AMC ordinances and the MOU agreements, the default management oversight setting would appear to potentially result in the circumstance of there being no employees or operational assignments to an Ashland Park and Recreation Commission. The current authority to clarify the organizational structure and assignment of oversight for Park and Recreation Department functions rests with the City Council.

## CONCLUSION.

The Charter has established the separate charges for the City Manager and the Commission. The electorate was presented with a decision to create the City Manager position with the understanding that the roles between the two would not substantially change. Historically, these roles have primarily maintained the character as defined by the Charter and as have been adopted in ordinances and mutual



agreements found necessary to guide who should be performing what activities on behalf of the City. It is through these ordinances and agreements that the Manager's ultimate authority can be understood.

Technically, the City has not established usual structures within which the Commissions can administer their chartered functions such as creation of a Parks and Recreation Department. Based on the City Council's allocation of responsibilities in the 2014 MOU, the City Manager, like the City Administrator before, currently does not have authority to manage or oversee the employees of the Park and Recreation Department. In limited circumstances, however, the City Manager has been given, as was the City Administrator before, limited operational authority over employees assigned to the Commission to ensure performance of certain maintenance functions necessary to the City. The City Manager, therefore, has been given historical authority in limited situations involving non-park property to direct staff assigned primarily under the Commission's authority to perform management and maintenance of city non-park facilities. Hence, although city employees are assigned to the Commission, they are not considered exclusively under the control of the Commission when engaged in work outside of the scope of the Commission. Where in doubt, the City Council could make changes to ordinances or budgetary appropriation, if necessary, to further define authority or empower the City Manager and indirectly affect Commission operational changes that the City finds necessary in the interest of the City. The authority to clarify the organizational structure and assignment of oversight for Park and Recreation Department functions rests with the City Council.

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