

October 15, 2024

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager

FROM: Victoria Yarbrough, Assistant City Manager

SUBJECT: Request for Agenda Item Placement
Resolution 2024–074, Approving an Amendment to
Chapter 31: City Manager, City Code and Declaring a 30-
Day Public Record

Recommendation:

The City Manager recommends approval.

The Assistant City Manager recommends approval.

Background

Chapter 31: City Manager of the City Code establishes the office of the City Manager, requirements, powers and duties, and various other specifications related to the position.

This change will clean up outdated provisions in § 31.06 Absence or Disability; Acting City Manager, and § 31.07 Powers and Duties, Sections (C) and (H).

The update to § 31.06 Absence or Disability; Acting City Manager reflects established practice and removes reference to a position that no longer exists (Director of Administrative Services).

The change to § 31.07 Powers and Duties, Section (C) removes the requirement that appointments of the City Clerk, City Physician, and Counsel must go to City Council. The City Clerk has not been appointed by Council for around 25 years, and a City Physician has never existed. Both Arizona law and the Sierra Vista City Code recognize that the City Attorney is appointed by the City Council as the City's chief legal advisor and has the primary responsibility for addressing the City's legal needs and keeping Council informed of all legal matters affecting the City. To assist with specialized legal issues, the City has also historically contracted with outside counsel to address issues such as water law matters, claims covered by the City's insurance carrier, unique human resources matters, and other areas as needed. Accordingly, the requirement that the City Council appoint all legal counsel for the City is both impractical and already covered by the City Attorney's responsibilities.

Finally, A.R.S. § 42-303(d) referenced in § 31.07 Powers and Duties, Section (H) no longer exists and so it was deleted. Much has changed in state law since this section of the chapter was last updated 25 years ago, and neither the reference nor the deletion changes the meaning of the section.

This public hearing will be followed by a 30-day public comment period after which it will return for consideration in final form as an Ordinance.

Fiscal Impact

None.

RESOLUTION 2024-074

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; APPROVING AN AMENDMENT TO CHAPTER 31: CITY MANAGER OF THE CITY CODE OF ORDINANCES; AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS, TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, Chapter 31: City Manager was originally included in the Code of Ordinances to establish the office of City Manager; specify powers, duties, and requirements; and other details pertinent to the office; and

WHEREAS, administrative changes, particularly in respect to positions, have occurred over the years; and

WHEREAS, updating and simplifying the chapter is occasionally necessary; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista declaring proposed amendments to the City Code of Ordinances as a public record be, and hereby is, reaffirmed.

SECTION 2

That the document attached hereto as Exhibit A, Amendments to Chapter 31 of the Sierra Vista City Code of Ordinances, is approved and a 30-day public comment period is declared.

SECTION 3

That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 24th DAY OF OCTOBER 2024.

Clea McCaa II
Mayor

Approval as to Form:

Attest:

Nathan J. Williams
City Attorney

Jill Adams
City Clerk

Exhibit A

CHAPTER 31: CITY MANAGER

Section

- 31.01 Definitions
- 31.02 Establishment of office
- 31.03 Residency
- 31.04 Eligibility of council member
- 31.05 Bond; compensation
- 31.06 Absence or disability; Acting City Manager
- 31.07 Powers and duties
- 31.08 Interaction with Council
- 31.09 Removal procedure
- 31.10 Supplemental agreements authorized

§ 31.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MANAGER. The City Manager of the City of Sierra Vista, Arizona.

RATIFICATION. Effected only by a majority vote of the whole City Council, as then constituted, convened in a regular Council meeting.

('76 Code, § 3-1-1) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.02 ESTABLISHMENT OF OFFICE.

The office of the City Manager is hereby created and established. The Manager shall be appointed by the Council wholly on the basis of his or her administrative and executive ability and qualifications and shall hold office for and at the pleasure of the Council.

('76 Code, § 3-1-2) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

Statutory reference:

Authority to establish position of City Manager, see A.R.S. § 9-303

§ 31.03 RESIDENCY.

Residence in the city at the time of appointment of a Manager shall not be required as a condition of the appointment, but within 90 days after reporting for work the Manager must become a resident of the city unless the Council approves his or her residence outside the city.

('76 Code, § 3-1-3) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.04 ELIGIBILITY OF COUNCIL MEMBER.

No member of the Council shall be eligible for appointment as Manager until one year has elapsed after the Council member shall have ceased to be a member of the Council.

('76 Code, § 3-1-4) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.05 BOND; COMPENSATION.

(A) The Manager shall furnish a corporate surety bond to be approved by the Council in such sum as may be determined by the Council, and shall be conditioned upon the faithful performance of the duties imposed upon the Manager as herein prescribed. Any premium for such bond shall be a proper charge against the city.

(B) The Manager shall receive such compensation as the Council shall from time to time determine. In addition, the Manager shall be reimbursed for all actual and necessary expenses incurred by him in the performance of his or her official duties.

('76 Code, §§ 3-1-5, 3-1-7) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.06 ABSENCE OR DISABILITY; ACTING CITY MANAGER.

In the event of the absence or disability of the City Manager, his or her powers and duties shall devolve to the Assistant City Manager or as determined by the City Manager. ~~upon the following officers of the city and they are so appointed in the following order as each succeeding officer may be absent or disabled:~~

~~—(A) Assistant City Manager.~~

~~—(B) Director of Administrative Services.~~

~~—(C) Police Chief.~~

~~—(D) As appointed by the City Manager.~~

('76 Code, § 3-1-6) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91; Am. Ord. 995, passed 12-14-95; Am. Ord. 1058, passed 1-22-98; Am. Ord. 1090, passed 4-22-99; Am. Ord. 1104, passed 1-13-00)

§ 31.07 POWERS AND DUTIES.

The Manager shall be the administrative head of the government of the city under the direction and control of the Council. He or she shall be responsible for the administration of all affairs of the city which are under his or her control. In addition to his or her general powers as administrative head, it shall be his or her duty and he or she shall have the powers set forth in the following:

(A) Law enforcement. It shall be the duty of the Manager to see that all laws and ordinances of the city, and that all franchises, contracts, permits, and privileges granted by the Council are faithfully observed and to report any failure in that regard to the Council, which shall give such instruction and direction as it may desire for remedial, corrective, or terminating action by the Manager.

(B) Authority over employees. It shall be the duty of the Manager, and he or she shall have the sole authority to control, order, and give directions to all heads of departments and to subordinate officers and employees of the city.

(C) Power of appointment and removal. Subject to the exceptions expressly provided by this chapter, it shall be the duty of the Manager to, and he or she shall appoint, remove, promote and demote any and all officers and employees of the city, except magistrate, City Attorney, ~~City Clerk, City Physician, Counsel~~, and members of boards, and commissions, and committees, all of whom shall be appointed by the Council. As to these officials, he or she shall recommend appointment and removal. All this shall be subject to all applicable personnel ordinances, rules, and regulations.

(D) Ordinances. It shall be the duty of the Manager to recommend to the Council for adoption, such measures and ordinances as he or she deems necessary.

(E) Attendance at Council meetings. It shall be the duty of the Manager to attend all meetings of the Council unless at his or her request he or she is excused therefrom by the Mayor individually or by the Council, except when his or her removal is under consideration. He or she shall present definite recommendations relative to each item on the agenda for approval, rejection or modification by the Council.

(F) Financial reports. It shall be the duty of the Manager to keep the Council fully advised as to the needs of the city in such form and at such times as requested by the Council.

(G) Budget. It shall be the duty of the Manager to prepare and submit the proposed annual budget and the proposed annual salary plan to the Council for its approval.

(H) Expenditure control and purchasing. It shall be the duty of the Manager to see that no indebtedness is incurred or expenditure made in violation of the state budget law, ~~and A.R.S. § 42-303(d) in particular.~~

(I) Investigations and complaints. It shall be the duty of the Manager to make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligations of the city and to report all findings to the Council. Further, it shall be the duty of the Manager to investigate all complaints in relation to matters concerning the administration of the city government and in regard to the service maintained by public utilities in the city and report all findings to the Council.

(J) Assistant City Manager. There is hereby created within the office of the City Manager the position of Assistant City Manager. The employee holding the position shall be subject to the supervision and control of the City Manager.

(K) City Manager to appoint and remove the Assistant City Manager. The position of Assistant City Manager is declared as unclassified service and he or she shall be appointed and removed by the City Manager and shall serve and receive compensation as agreed to by contract. The Assistant City Manager shall have such duties and responsibilities as assigned by the City Manager. The Assistant City Manager shall direct the activities of the departments assigned by the City Manager.

('76 Code, § 3-1-8) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91; Am. Ord. 1090, passed 4-22-99)

§ 31.08 INTERACTION WITH COUNCIL.

(A) Council-Manager relations. The Council and its members shall deal with the administrative services of the city only through the Manager, except for the purpose of inquiry, and neither the Council, nor any member thereof, shall give orders or instructions to any employee or officer other than the Manager. The Manager shall take his or her orders and instructions from the Council only when promulgated at a duly convened meeting of the Council, and no individual Council member shall give any orders or instructions to the Manager except for purpose of inquiry.

(B) Attendance at meetings. The Manager may attend all meetings of commissions, boards, or committees created by the Council, upon his or her own volition or upon direction of the Council. At the meetings which the Manager attends, he or she shall be heard by the commissions, boards, or committees as to all matters upon which he or she wishes to address the members thereof, and he or she shall inform the members as to the status of any matter being considered by the Council, and he or she shall cooperate to the fullest extent with the members of all commissions, boards, or committees appointed by the Council.

('76 Code, § 3-1-9) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.09 REMOVAL PROCEDURE.

(A) Removal of City Manager. The removal of the Manager shall be effected only by a majority vote of the whole Council as then constituted, convened in a regular Council, subject, however, to the provisions of this section. In case of his or her intended removal by the Council, the Manager shall be furnished with a written notice stating the Council's intention to remove him or her at least 30 days before the effective date of removal. If the Manager so requests, the Council shall provide in writing detailed reasons for the intended removal, which shall be provided the Manager within seven days after the receipt of the request from the Manager, and at least 15 days prior to the effective date of the removal.

(B) Hearing. Within seven days after the delivery to the Manager of the notice of intention to remove, the Manager may, by written notification to the City Clerk, request a hearing before the Council. Thereafter, the Council shall fix a time for the hearing which shall be held at its usual place, but before the expiration of the 30-day period, at which the Manager shall appear and be heard, with or without counsel.

(C) Suspension pending hearing. After furnishing the Manager with written notice of intended removal, the Council may suspend him or her from duty, but the Manager's compensation shall continue until his or her removal by action of the Council passed subsequent to the aforesaid hearing.

(D) Discretion of Council. In removing the Manager, the Council shall act at its discretion and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing.

(E) Limitation on removal. Notwithstanding the provisions of this section, the Manager shall not be removed from office, other than for misconduct in office, during or within a period of 90 days next succeeding any general municipal election held in the city at which election a member of the Council is elected or when a new Council member is appointed. The purpose of this provision is to require any newly-elected or appointed member of the Council or a reorganized Council to observe the actions and ability of the Manager in the actual performance of the powers and duties of the office.

(F) Resignation of Manager. The Manager shall provide the Council a minimum of 45 days written notice of intention to resign his or her position. The Manager shall assist the Council in the recruitment and selection of a replacement if requested by the Council. In the event of resignation due to health reasons, the period of written notice shall be determined in conference between the Manager and the Council.

('76 Code, § 3-1-10) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)

§ 31.10 SUPPLEMENTAL AGREEMENTS AUTHORIZED.

Nothing in this chapter shall be construed as a limitation on the power or authority of the Council to enter into any supplemental agreement with the Manager delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter or of state statutes.

('76 Code, § 3-1-11) (Ord. 302, passed 7-24-75; Am. Ord. 891, passed 12-12-91; Am. Ord. 894, passed 1-9-92; Am. Ord. 895, passed 12-12-91)