

Chapter 2.16 CITY ATTORNEY

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2.16.010 Office created.

The office of the city attorney is created and established.

(Prior code § 2-4.501)

2.16.020 Appointment—Qualifications.

The city attorney shall be appointed by the council wholly on the basis of his or her legal ability and experience, particularly in the municipal law field. The city attorney shall be an attorney-at-law licensed to practice law in the state.

(Prior code § 2-4.502)

2.16.030 Eligibility of councilmembers for position.

No member of the council shall be eligible for appointment as city attorney until one year has elapsed after such councilmember has ceased to be a member of the council.

(Prior code § 2-4.503)

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2.16.040 Compensation.

- A. The city attorney shall receive such compensation as the council shall from time to time determine. In addition, the city attorney shall be reimbursed for all the actual and necessary expenses incurred by him or her in the performance of his or her official duties.
- B. When the city attorney is directed by the council to enforce city laws and regulations through office hearings and court proceedings, both civil and criminal, when directed to appear on behalf of the city before such legislative committees and regulatory agencies and when directed to represent the city in all legal actions to which the city is a party and for which other arrangements for legal counsel have not been made, then the city manager shall negotiate with the city attorney for additional legal fees, not to include the monthly retainer.
- C. On the termination of the employment of the city attorney by reason of involuntary removal from service, other than for wilful misconduct in office, the city attorney shall receive cash severance pay in a lump sum equal to one month's pay for each of the first three years of continuous service or fraction thereof as city attorney, not to exceed a total of three months pay, such pay to be computed at the highest salary received by the city attorney during his or her service with the city. "Involuntary removal from service" shall include reductions in pay not applicable to all employees of the city.

(Prior code § 2-4.504)

2.16.050 Powers and duties.

The city attorney shall be the chief legal officer of the city under the direction and control of the council, except as otherwise provided in this chapter and shall have the following powers and duties:

- A. To advise the council, its committees, its various boards and commissions or any city officer, when requested, upon all legal questions arising in the conduct of city business;
- B. To prepare or revise ordinances or resolutions when so requested by the council or by the city manager;
- C. To make recommendations for ordinances, resolutions or other documents or procedures affecting the legal position of the city;
- D. To give his or her opinion upon any legal matter or question submitted to him or her by the council, any board or commission of the city, the city manager or any other city officer;
- E. To attend all council meetings, unless excused by the council, for the purpose of giving the council any legal advice requested by its members;
- F. To attend such meetings of other boards and commissions of the city as he or she shall deem necessary and proper or as the council may direct;
- G. To prepare for execution or approve as to form, all contracts and instruments to which the city is a party and to approve as to form and for filing all bonds and insurance policies submitted to the city;
- H. To make the following reports:
 - 1. To immediately report the outcome of any litigation in which the city has an interest to the city manager and the council; and
 - 2. To make an annual report to the city manager and the council as of July 31st of each year of all pending litigation in which the city has an interest and the condition thereof and the state of his or her office;
- I. To enforce city laws and regulations through office hearings and court proceedings, both civil and criminal;

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- J. To review and analyze all state and federal legislation affecting the city;
- K. To appear on behalf of the city before such legislative committees and regulatory agencies as the council may direct;
- L. To represent the city in all legal actions to which the city is a party and for which other arrangements for legal counsel have not been made;
- M. To perform such other duties as may be imposed by statute, by any ordinance of the city or by other action of the council; and
- N. To deliver all records, documents and property of every description in his or her possession belonging to his or her office or to the city to his or her successor in office.

(Prior code § 2-4.505)

2.16.060 Council and city attorney relations.

The city attorney shall take his or her orders and instructions from the council only when sitting in a duly convened meeting of the council and no individual councilmember shall give any orders or instructions to the city attorney. However, any councilmember, as an individual, may request pertinent information on municipal affairs from the city attorney. Such requests shall be answered promptly.

(Prior code § 2-4.506)

2.16.070 Departmental cooperation.

It shall be the duty of all subordinate officers and the city clerk, city treasurer and city manager to assist the city attorney in carrying out the functions of his or her office.

(Prior code § 2-4.507)

2.16.080 Removal.

The removal of the city attorney shall be effected only by a majority vote of the whole council as then constituted, convened in a regular council meeting. In case of his or her intended removal by the council, the city attorney shall be furnished with a written notice citing the council's action to remove him or her at least thirty (30) days before the effective date of removal. If the city attorney so requests, the council shall provide in writing reasons for the removal, which shall be provided the city attorney within seven days after the receipt of such request from the city attorney and at least fifteen (15) days prior to the effective date of such removal. After furnishing the city attorney with written notice of removal, the council may suspend him or her from duty, but his or her compensation shall continue until the date of his or her removal has been established by action of the council. The removal of the city attorney shall be subject to the following provisions:

- A. **Hearing.** Within seven days after the delivery to the city attorney of such notice of intention to remove, he or she 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 thirty (30) day period, at which the city attorney shall appear and be heard, with or without counsel.
- B. **Suspension Pending Hearing.** After furnishing the city attorney with written notice of intended removal, the council may suspend him or her from duty, but his or her compensation shall continue until his or her removal by action of the council passed subsequent to the hearing provided for in subsection A of this section.

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- C. Discretion of the Council. In removing the city attorney, the council shall use its uncontrolled discretion and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing, the purpose of which is to allow the city attorney to present to the council his or her grounds of opposition to his or her removal prior to its action.

(Prior code § 2-4.508)

2.16.090 Removal—Limitations.

Notwithstanding the provisions of Section 2.16.080 of this chapter, the city attorney shall not be removed from office, other than for misconduct in office, during or within a period of ninety (90) days next succeeding any general or special 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 allow any newly-elected or appointed member of any council or a reorganized council to observe the actions and ability of the city attorney in the performance of the powers and duties of his or her office. After the expiration of such ninety (90) day period, the provisions of Section 2.16.080 as to the removal of the city attorney shall apply and be effective.

(Prior code § 2-4.509)

2.16.100 Agreements on employment.

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 city attorney delineating additional terms and conditions of employment not inconsistent with any provision of this chapter.

(Prior code § 2-4.510)

2.16.110 Resignation.

The city attorney shall provide written notice, in the event of his or her resignation, to the council at least thirty (30) days prior to his or her termination date. The council may waive this provision at its sole discretion.

(Prior code § 2-4.511)

2.16.120 Management and control of office.

The city attorney shall have the management and control over his or her office.

(Prior code § 2-4.512)

2.16.130 Employment of special counsel.

Whenever the council deems it to be in the best interests of the city, it may employ special counsel to handle particular legal matters of the city upon such terms as the council shall deem proper.

(Prior code § 2-4.513)