

ORDINANCE NO. 978-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW AMENDING BARSTOW MUNICIPAL CODE CHAPTER 2.08– CITY MANAGER

WHEREAS, the City Council intends to amend Barstow Municipal Code Chapter 2.08 – City Manager to restore the position of City Manager, to be provided the powers and duties stated in this Ordinance, including requiring that the City Manager consult with the City Council prior to appointing or removing any department head, and maintaining the prior recent amendments to the appointment, removal, and selection process for the City Manager.

NOW THEREFORE, the City Council of the City of Barstow hereby ordains as follows:

SECTION 1. Amendment of Chapter 2.08. Chapter 2.08 of the Barstow Municipal Code is amended to read as follows, with additions shown in underlined text and deletions shown in ~~strike-through text~~:

Sec. 2.08.010. - Office created.

The office of the city manager administrator is created and established. The city manager administrator shall be appointed by the city council wholly on the basis of his/her administrative and executive ability and qualifications and shall hold office for and during the pleasure of the city council. For the purposes of the Barstow Municipal Code and City enactments, any references to “city manager administrator” shall mean city manager administrator, with the powers and duties as defined and limited by this chapter.

Sec. 2.08.020. - Residence.

Residence in the city at the time of appointment of a city manager administrator shall not be required as a condition of the appointment, but no person shall hold the office of city manager administrator unless such person resides within the regulated response time as stated in the personnel policies and procedures or applicable employment agreement.

Sec. 2.08.030. - Councilmember; eligibility.

No person elected as a councilmember of the city shall, subsequent to such election, be eligible for appointment as city manager administrator until one year has elapsed after such councilmember shall have ceased to be a member of the city council.

Sec. 2.08.040. - Bond.

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

Sec. 2.08.050. - Temporary manager.

The city manager administrator shall appoint, subject to the approval of the city council, one of the other officers or department heads of the city to serve as city manager administrator pro tem during any temporary absence or disability of the city manager administrator. In case of the absence or disability of the city manager administrator, and his/her failure to so appoint a city manager administrator pro tem, the city council may designate some qualified city employee to perform the duties of the city manager administrator during the period of absence or disability of the city manager administrator; subject, however, to such person furnishing a corporate surety bond conditioned upon faithful performance of the duties required to be performed, as set forth in section 2.08.040.

Sec. 2.08.060. - Compensation.

(a)The city manager administrator shall receive such compensation and expense allowances as the city council shall from time to time determine and fix by resolution, and the compensation and expenses shall be a proper charge against such funds of the city as the city council shall designate.

(b)The city manager administrator shall be reimbursed for all sums necessarily incurred or paid by him/her in the performance of his/her duties or incurred when traveling on business pertaining to the city. Reimbursement shall only be made, however, when a verified itemized claim, setting forth the sums expended for such business for which reimbursement is requested, has been presented to the city council for approval.

Sec. 2.08.070. - Powers and duties.

Under the authority and direction of the mayor and city council, the city manager administrator shall be the administrative head of the government of the city, except as otherwise provided in this chapter. The city manager administrator shall be responsible for the efficient administration of all the affairs of the city which are under his/her management and may delegate duties to subordinate officers and employees of the city. In addition to the city manager's administrator's general powers as administrative head, and not as a limitation thereon, it shall be the city manager's administrator's duty and the city manager administrator shall have all the powers set forth in the following subsections, under the authority and direction of the mayor and city council:

(1) Law enforcement. The city ~~manager administrator~~ shall enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the mayor and city council and approved in a duly held noticed City Council meeting, are faithfully followed;

(2) Authority over employees. The city ~~manager administrator~~ shall have the authority to order and give directions to all heads of departments and to subordinate officers and employees of the city under his/her jurisdiction through their department heads;

(3) Power of appointment, ~~etc.~~ It shall be the duty of the city ~~manager administrator~~ to appoint, remove, promote, and demote any and all city employees, officers, and department heads of the city, in the manner provided herein, excepting the elected city clerk, city attorney and elected city treasurer. All city department heads, as defined by the City's personnel policies and procedures, may be appointed or removed only after the City Manager consults with ~~upon the recommendation of the city administrator and consent by a majority vote of the Mayor and whole City Council~~ in a duly noticed open or closed session council meeting, as required by applicable law. Any department head cannot be removed from office other than for misconduct in office, during or within a period of ninety (90) days next succeeding any general municipal election held in the city at which election a member of the city council is elected. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to observe the actions and ability of the department head and the performance of the powers and duties of his/her office. In removing a department head, the city ~~council~~ manager shall consider the recommendation of the city council administrator and shall use ~~its~~ his/her uncontrolled discretion; and ~~its~~ his/her action shall be final. The Mayor and City Council shall also have the power to appoint or remove the City Attorney and city ~~manager administrator~~, in compliance with this section and applicable law. The city ~~manager administrator~~ shall appoint, remove, promote, and demote any and all city employees except as aforesaid, subject to such personnel policies and procedures as may be adopted by the Mayor and City Council;

(4) Reorganization of offices, etc. It shall be the duty and responsibility of the city ~~manager administrator~~ to recommend to the Mayor and City council reorganization of departments under his/her direction in the interest of efficient, effective and economical conduct of the city's business, subject to approval by a majority of the Mayor and whole City Council as required for creation or elimination of departments;

(5) Ordinances. It shall be the duty of the city ~~manager administrator~~ to recommend to the Mayor and City council for adoption such measures and ordinances as he/she deems necessary or expedient for the operations of the city;

(6) Attendance at council meetings. It shall be the duty of the city ~~manager administrator~~ to attend all meetings of the city council unless excused therefrom by the Mayor, except when his/her removal is under consideration;

(7) Financial reports. It shall be the duty of the city ~~manager administrator~~ to keep the Mayor and City Council fully advised as to the financial conditions and needs of the city, including at a minimum, on a quarterly basis, through financial reports to be presented at a regularly scheduled council meeting;

(8) Budget. It shall be the duty of the city ~~manager administrator~~ to prepare and submit the proposed annual budget and the proposed annual salary plan to the Mayor and City Council for its approval, with such submission to be no less than sixty (60) ~~ninety (90)~~ days before the annual budget must be enacted by the City Council;

(9) Purchasing agent. The city ~~manager administrator~~ shall be responsible for the purchase of all supplies for all ~~of the~~ departments or divisions of the city. No expenditures shall be submitted or recommended to the mayor and city council except on report and approval of the city ~~manager administrator~~, and the city ~~manager administrator~~ shall ensure that appropriate controls are in place concerning the purchasing and storage of supplies for the City with appropriate inventory and accounting procedures in place;

(10) Investigations. The city ~~manager administrator~~ shall make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligation of the city, including upon a complaint being made or having knowledge of any impropriety on the part of the city, a city department or any employee;

(11) Public utilities; franchises. The city ~~manager administrator~~ shall investigate all complaints in relation to matters concerning the administration of the city with regards to the services maintained by public utilities in the city, and to ensure that all franchise permits granted by the city are faithfully performed, followed, and observed;

(12) Public buildings. The city ~~manager administrator~~ shall exercise general supervision over all public buildings, public parks and all other public property which are under the control and jurisdiction of the Mayor and City Council;

(13) Hours of employment. The city ~~manager administrator~~ shall devote his/her entire working time to the duties of his/her office in the interests of the city, except upon permission of the Mayor and City council by action thereof;

(14) Additional duties. The city ~~manager administrator~~ shall perform such other duties and exercise such other powers as may be delegated from time to time by ordinance or resolution or other action as directed by the Mayor and City Council;

(15) Council-manager ~~administrator~~ relations. The Mayor and City Council and its members shall deal with the administrative services of the city only through the city ~~manager administrator~~, except for the purpose of inquiry. Neither the Mayor, City council nor any member thereof shall give directions to subordinates of the city ~~manager administrator~~. The city ~~manager administrator~~ shall take instructions from the mayor and city council only when sitting in a duly held meeting of the Mayor and City Council, and no individual mayor or councilmember shall give any instructions to the city ~~manager~~

administrator. The Mayor and any member of the City Council shall have the right to discuss with the city manager administrator any matter of general public interest or concern relative to the proper operations of the city and its needs, problems, or projects thereof, including raising any concerns about any unmet city needs or obligations;

(16) Department cooperation. It shall be the duty of all subordinate officers, the city clerk, city treasurer and city attorney to assist the city manager administrator in administering the affairs of the city efficiently, economically and harmoniously so far as may be consistent with their duties as prescribed by law and ordinances of the city;

(17) Attendance at commission meetings. The city manager administrator may attend meetings of the planning commission and any other commissions, boards or committees hereafter created by the Mayor and City Council, upon direction of the Mayor and City Council. At such meetings which the city manager administrator attends, he/she shall inform the members as to the status of any matter being considered by the Mayor and City Council, and shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the Mayor and City Council;

(18) Removal of city manager administrator. The removal of the city manager administrator shall be only upon a majority vote of the mayor and the whole city council of the city seated in a duly noticed council meeting. At any time and by a majority vote of the mayor and whole city council, the city manager administrator may be placed on paid administrative leave. In the absence of the city manager administrator, the mayor and city council shall hire or appoint a person who may or may not be a city employee to serve as an acting or interim city manager administrator under the provisions of Sections 2.08.020, 2.08.030, and 2.08.050 of this Code and other applicable law, and any acting or interim city manager administrator shall reside at a location within sixty (60) minutes standard response time to Barstow city hall;

(19) Discretion of council. In removing the city manager administrator, the Mayor and City Council shall use absolute discretion and their action shall be final and shall not be dependent upon any particular showing or degree of proof. Any majority vote by the mayor and whole city council to remove the city manager administrator shall be final;

(20) Limitation on removal. Notwithstanding the provisions of this chapter hereinbefore enumerated, the city manager administrator shall not be removed from office during or within a period of ninety (90) days next succeeding any general municipal election held in the city at which election a member of the city council is elected, except by a four-fifths vote of the mayor and whole city council; the purpose of this provision being to allow any newly elected members of the city council or a reorganized city council to observe the actions and ability of the city manager administrator in the performance of the powers and duties of his/her office. After the expiration of the ninety (90) day period aforementioned, the provisions of the preceding sections as to the removal of the city manager administrator shall be effective.

SECTION 2. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

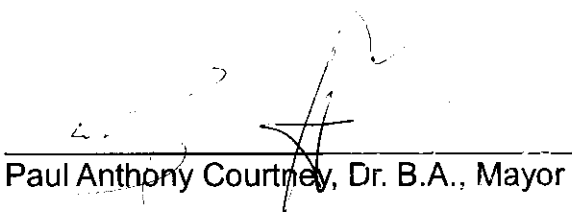
SECTION 3. Continuity. To the extent the provisions of this ordinance are substantially the same as previous provisions of the Barstow Municipal Code, these provisions shall be construed as continuations of those provisions and not as new enactments. Further, with the approval of this ordinance, the City's current City Administrator shall become the City's City Manager, with all terms and conditions of employment remaining the same as governed by the Barstow Municipal Code, the existing employment contract, and applicable law.

SECTION 4. CEQA. This ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines §§ 15060(c)(2), 15060(c)(3), and 15061(b)(3). This ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; it does not involve a "project" as defined by CEQA Guidelines § 15378; and it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility this ordinance may have a significant effect on the environment.

SECTION 5. Effective Date. This ordinance shall take effect thirty (30) days after its adoption by the City Council.


SECTION 6. Certification. The City Clerk shall certify to the passage and adoption of this ordinance, if it takes effect, and shall cause the same to be published or posted according to law.

PASSED, APPROVED, AND ADOPTED this 18th day of October 2021.




Paul Anthony Courtney, Dr. B.A., Mayor

ATTEST:



Andrea Flores, City Clerk

APPROVED AS TO FORM:



Matthew Summers, City Attorney

I, Andrea Flores, City Clerk for the City of Barstow, California, and ex-officio Clerk of the City Council, do hereby certify under penalty of perjury that the foregoing is a true and correct copy of Ordinance No. 978-2021, which was introduced at the regular meeting of the City Council of the City of Barstow held on the 4th day of October, 2021, and adopted at the regular meeting of the City Council of the City of Barstow on the 18th day of October, 2021, by the following vote:

AYES: COUNCIL MEMBER KRUSE, SILVA, ROSE, MAYOR PRO TEM
NOBLE, AND MAYOR COURTNEY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE



Andrea Flores, City Clerk