



TOWN OF FAIRFAX

STAFF REPORT

June 7, 2023

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager

SUBJECT: Second reading and Adoption of an Ordinance Amending Town Code Section 2.12.070 (B)(3) to eliminate the requirement for Town Council ratification of appointment, removal or demotion of department heads by the Town Manager.

RECOMMENDATION

Staff recommends that the Council: waive second reading and read by title only and adopt an Ordinance Amending Title 2, “Town Manager”, Section 2.12.070, “Powers and Duties” of the Fairfax Town Code, and Finding the Action Exempt from the California Environmental Quality Act (CEQA).

BACKGROUND

Fairfax is currently engaged in its third recruitment for the Planning and Building Services Director. The market is extremely competitive for public employers seeking to fill positions, particularly in Planning. When an appropriate candidate is identified, it will be important to show Fairfax as an attractive workplace in terms of employee experience, resources, and compensation. What the candidate experiences as they consider joining Fairfax matters in creating a successful recruitment.

Currently, Town Code Section 2.12.070 (B)(3) requires that the Town Council in a public meeting ratify the appointment or termination of a department head. For a candidate considering joining Fairfax, after they have gone through a rigorous screening, interviewing and background check process, and the Town Manager has negotiated their new employment with them, the candidate needs to notify their current employer that they may be leaving, but it is not certain until weeks later, if the Council ratifies the Town Manager’s decision to hire them. Candidates often see this as jeopardizing their current employment while not providing certainty of new employment, and they may withdraw from consideration rather than take that risk. This code section has also been an issue for employees and the Council regarding termination; personnel laws require privacy, which is in direct conflict with public ratification.

The Town of Fairfax operates in the Council/Manager form of government. Typically under this form, the Council appoints or terminates the Town Manager and Town Attorney, all other employees ultimately report to the Town Manager. In this way, the Council is similar to a company’s Board of Directors, and the Town Manager is similar to a CEO. The role and responsibility of the Town Manager is to run the organization and provide the services that the Council has set in their policy and financial oversight roles. This form of government is usually listed on department head recruitment brochures, because candidates factor this into their decision to apply.

DISCUSSION

The attached ordinance eliminates the requirement for Town Council ratification of appointment, removal or demotion of department heads by the Town Manager. This will make Fairfax’s department head management consistent with best practice in the industry and the expectations of candidates. This change will remove a potential barrier to candidates, and it will remove some risk to the Council regarding personnel privacy requirements.

The ordinance was introduced at the May 3rd Town Council meeting. Tonight is the second reading and adoption. If adopted the ordinance will be effective July 7. The finalist interview for Planning and Building Services Director is scheduled for June 19, so the ordinance will resolve this issue before the new Director joins Fairfax. This ordinance doesn’t reduce the Council’s authority to approve all job descriptions and pay ranges, and to allocate budget for them.

ATTACHMENT

Ordinance

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TITLE 2.12, "TOWN MANAGER", SECTION 2.12.070, "POWERS AND DUTIES" OF THE FAIRFAX TOWN CODE, AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the Town wishes to amend its Town Code to clarify that Town Council ratification of the Town Manager's appointments and removals of certain Town officers is no longer required.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.12.070 of Title 2 of the Fairfax Municipal Code, entitled "Powers and Duties," is hereby amended in part to read as follows (deletions shown in ~~strikethrough~~ and additions shown in underline):

"§ 2.12.070 Powers and Duties.

...

(3) *Appointment and removal of certain officers.* Subject to, and in accordance with, civil service and town personnel ordinances and regulations, to appoint, remove and demote any appointive officers and employees, except the Town Attorney; provided, however, that the appointment, ~~removal or demotion~~ of department heads shall require ratification by the Town Council, ~~and provided further, that after~~ until the Town Manager has served in that position for 12 months, ~~the Town Council may, by resolution, eliminate the requirement for such ratification and vest the power to appoint, remove or demote department heads in the Town Manager, and provided further, that when required, the final vote to ratify the appointment, removal or demotion of a department head shall be done in an open session of the Town Council;~~

....."

SECTION 2. All other provisions of 2.12.070 (and 2.12) shall remain the same.

SECTION 3. Compliance with CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. This Ordinance is exempt from environmental review under CEQA pursuant to State CEQA Guidelines sections 15061(b)(3) and 15378(b)(5). An activity is subject to CEQA only if that activity has "the potential for causing a significant effect on the environment." (State CEQA Guidelines, § 15061(b)(3).) An activity is thus exempt from CEQA "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (*Ibid.*) Here, the amendment

of the Municipal Code as set forth in this Ordinance does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15061(b)(3).) Moreover, approval of the Ordinance merely constitutes an administrative activity of the City and is additionally exempt from CEQA on that basis. (State CEQA Guidelines, § 15378(b)(5).)

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date and Posting. This Ordinance shall take effect thirty (30) days after its adoption. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 3rd day of May 2023, and duly adopted at the next regular meeting of the Town Council on the 7th day of June 2023, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chance Cutrano, Mayor

Attest: _____
Michele Gardner, Town Clerk