



TO: City Council Members, Mayor Marlin
FROM: Curt Borman, Legal Division

RE: Ordinance 2017-07-033

7/28/2017

In reviewing Ordinance No. 2017-06-033, I note that City Council changed the State of Illinois terminology with respect to Aldermanic and Aldermen thinking that the City's home rule authority allowed for such a change. We do not believe this is allowable under state law.

Ordinance No. 2017-06-033 requires only two minor changes to Section 1 to be legally sufficient. First, "mayor-alderperson" needs to be changed back to "mayor-aldermanic." Second, "seven (7) alderpersons" needs to be changed back to "seven (7) aldermen."

The explanation that can be given for the first change is as follows: Illinois has several types of municipal governments. The City of Urbana operates under a form of government established in Article 3.1 of the Illinois Municipal Code, 65 ILCS 5/3.1-5-5 *et seq.* Over the years, this type became known as the mayor-aldermanic form of government. The Fourth District Appellate Court recognized the term "mayor-aldermanic" in 1977. *Illinois Mun. Ret. Fund v. City of Barry*, 52 Ill. App. 3d 644, 645, 367 N.E.2d 1048, 1049 (4th Dist. 1977). Likewise, the Illinois Supreme Court recognized this term in 1980. *Boytor v. City of Aurora*, 81 Ill. 2d 308, 310-11, 410 N.E.2d 1, 2 (1980). The "mayor-aldermanic" language in Section 1 of Ordinance No. 2017-06-033 uses this customary label to describe the City's form of government.

The explanation that can be given for the second change is as follows: Section 3.1-40-5 of the Illinois Municipal Code governs the composition of municipalities established under Article 3.1. In relevant part, this section states that "[t]he city council shall consist of the mayor and aldermen" 65 ILCS 5/3.1-40-5. The "seven (7) aldermen" language in Section 1 of Ordinance No. 2017-06-033 recognizes that the City Council is comprised of persons elected or appointed to the statutory office of alderman. Nevertheless, additional language in this section allows gender-neutral labels to be used to refer to these persons instead of the statutory term.

A proposed correction is attached.

ORDINANCE NO. 2017-08-043

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 2, SECTION 2-24

WHEREAS, on July 17, 2017, the City Council passed Ordinance No. 2017-06-033, authorizing certain changes to Urbana City Code Section 2-24; and

WHEREAS, the City Council, after due consideration, finds that further amending such section as herein provided is in the best interests of the City and is desirable for the welfare of the City's government and affairs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1.

Urbana City Code Chapter 2, "Administration," Article II, "Elected Officials," Division 2, "City Council," Section 2-24, "Composition," is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 2-24. - Composition.

The city operates under the mayor-aldermanic ~~mayor-alderperson~~ form of government. The city council shall consist of the mayor and seven (7) aldermen, alderpersons, elected for four (4) year terms as provided by state law. The terms "alderman," "alderwoman," "alderperson," or "city council member," and their respective plurals, shall be acceptable for use as a title by the elected or appointed representatives of each of the wards. Each member may direct which of the terms shall be used by the clerk in the official records, journals, and procedures of the city council to record such members' official conduct. As used in this Code, the words "alderman," "alderwoman," "alderperson," or "city council member" shall be construed and considered to have full and equal legal affect and be synonymous.

Section 2.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to

the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ___ day of _____, _____.

AYES:

NAYS:

ABSTAINED:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ___ day of _____, _____.

Diane Wolfe Marlin, Mayor

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Section 1.

Urbana City Code Chapter 2, "Administration," Article II, "Elected Officials," Division 2, "City Council," Section 2-24, "Composition," is hereby amended and as amended shall read as follows:

Sec. 2-24. - Composition.

The city operates under the mayor-aldermanic form of government. The city council shall consist of the mayor and seven (7) aldermen, elected for four (4) year terms as provided by state law. The terms "alderman," "alderwoman," "alderperson," or "city council member," and their respective plurals, shall be acceptable for use as a title by the elected or appointed representatives of each of the wards. Each member may direct which of the terms shall be used by the clerk in the official records, journals, and procedures of the city council to record such members' official conduct. As used in this Code, the words "alderman," "alderwoman," "alderperson," or "city council member" shall be construed and considered to have full and equal legal affect and be synonymous.

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AYES:

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ABSTAINED:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Diane Wolfe Marlin, Mayor