

RESOLUTION NO. 20-40

A RESOLUTION OF THE CITY OF OREGON CITY RECOGNIZING THE RULES FOR MAYORAL APPOINTMENTS

WHEREAS, Section 20 of the Oregon City Charter authorizes the Mayor of Oregon City to “appoint the committees provided by the rules of the commission;” and

WHEREAS, the Mayor of Oregon City, Dan Holladay, was recalled in an election held in the City of Oregon City held on November 10, 2020; and

WHEREAS, Article II, section 20 of the Oregon Constitution states that, when an officer is recalled, the officer “shall continue to perform the duties of office until the result of the special election is officially declared;” and

WHEREAS, ORS 254.546(1) controls how the results of a recall election are officially declared and provides that “the county clerk shall prepare an abstract of the votes and deliver it to the elections official authorized to order the recall election not later than the 20th day after the election;” and

WHEREAS, ORS 254.546(2) states that “for purposes of section 18, Article II, Oregon Constitution, the result of the recall election referred to in subsection (1) of this section shall be considered officially declared on the date the abstract of the votes is delivered;” and

WHEREAS, the Clackamas County Clerk delivered an abstract of votes from the November 10, 2020, Recall Election to the City Elections Officer at 4:43 p.m. on Monday, November 30, 2020; and

WHEREAS, at 12:47 p.m. on November 30, 2020, the Mayor of Oregon City appointed several members to various boards and commissions of the City of Oregon City, including the City’s Planning Commission, Historic Review Board, and Parks & Recreation Advisory Committee, as shown in the e-mail attached to this Resolution as Exhibit 1; and

WHEREAS, many of the appointments made by the Mayor on November 30, 2020, were to positions that are not vacant and whose terms do not end until after the Mayor’s recall takes effect; and

WHEREAS, the State of Oregon, as demonstrated in cases such as *Coley v. Morrow*, 183 Or App 426, 52 P3d 1090 (2002), and *Beardsley v. Hill*, 219 Or 440, 348 P2d 58 (1959), follows the common law principle of an “indivisible day;” and

WHEREAS, the principle of the “indivisible day” was previously applied to prevent a former Oregon City Mayor from appointing members to boards and commissions on his final partial day in office, as shown in the City Attorney Memorandum attached to this Resolution as Exhibit 2; and

WHEREAS, under Oregon law, the Commission, as the popularly elected local officials directly accountable to their constituency, should have the power and right to interpret local enactments in the first instance.

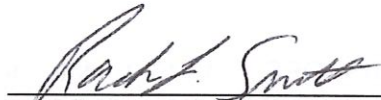
NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

Section 1. The City Commission interprets the provisions regarding mayoral appointment power to be exercisable only to fill existing vacancies or positions that become open during the term of the Mayor. A Mayor cannot reach into the future and appoint persons to fulfill offices that do not become vacant when the Mayor would no longer have the power to fill the position.

Section 2. The City follows the common law principle of the "indivisible day" and because, under Oregon law, the Mayor's recall took effect on the "date the abstract of votes is delivered" to the City Elections Officer, the Mayor was recalled as of November 30, 2020, meaning the Mayor did not have the authority to take any official actions on that day, including the appointment of persons to the City's Planning Commission, Historic Review Board, or Parks & Recreation Advisory Committee.


Section 3. This Resolution shall take effect immediately upon its adoption by the City Commission.

Approved and adopted at a special meeting of the City Commission held on the 8th day of December 2020.



RACHEL LYLES SMITH,
Commission President

Attested to this 8th day of December 2020:



Katie Riggs, City Recorder

Approved as to legal sufficiency:



Carrie Roth
City Attorney

Attachments:

Exhibit 1 – Appointment emails from Dan Holladay

Exhibit 2 – January 30, 2003 City Attorney Memorandum

Kattie Riggs

Subject: Appointments

From: Dan Holladay <dholladay@orcity.org>

Sent: Monday, November 30, 2020 1:10 PM

To: Kattie Riggs <kriggs@orcity.org>

Subject: RE: Appointments

Let's do Tim instead of Troy.

Mayor Dan Holladay

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Kattie Riggs <kriggs@orcity.org>

Date: 11/30/2020 12:48 PM (GMT-08:00)

To: Dan Holladay <dholladay@orcity.org>, Tony Konkol <tkonkol@orcity.org>

Cc: Tony Konkol <tkonkol@orcity.org>, Kattie Riggs <kriggs@orcity.org>

Subject: RE: Appointments

Dan,

Over the weekend we received another application for the PRAC. Do you want to see the application?

Thanks,

Kattie



Kattie Riggs, CMC

City Recorder

kriggs@orcity.org

City of Oregon City

PO Box 3040

625 Center Street

Oregon City, Oregon 97045

Office Hours: Mon – Fri, 8 am – 5 pm

503-496-1505 Direct phone

503-657-0891 City phone

503-657-7026 fax

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

From: Dan Holladay <dholladay@orcify.org>
Sent: Monday, November 30, 2020 12:47 PM
To: Kattie Riggs <kriggs@orcify.org>; Tony Konkol <tkonkol@orcify.org>
Subject: Appointments

Ms. Riggs,

Here are my appointments.

HRB

Ray Stobie

Gordon Lawrence

Parks and Recreation

Karin Morey

Troy Bolinger

Jeff Akin

Kylie Edwards

Planning Commission

Daphne Wuest

Betty Mumm

Mayor Dan Holladay



G A R V E Y S C H U B E R T B A R E R

MEMORANDUM

TO: Honorable Mayor and City
Commission

FROM: Bill Kabeiseman
Assistant City Attorney

DATE: January 30, 2003

RE: Mayor's Ability to Make Appointments on January 2, 2003

FILE NO.:

A question has arisen regarding when the Mayor may appoint members of city commissions. The Oregon City Charter provides that the Mayor has the power to appoint all members of committees created by the Commission.¹ However, the Mayor only has that power while he or she is in office, thus the question becomes when the Mayor's term expires. The Charter does not directly address that question; however, Chapter III, section 9 provides that:

“ . . . [A] mayor shall be elected from the city at large for a four year term. . . . The term of office of the mayor shall commence on the 2nd day of January after the election of that position the preceding November. . . ”

Thus, the analysis begins with the concept that a mayor's term begins on January 2nd of a particular year and extends for four years. However, that does not pinpoint exactly when the term ends – e.g., if a mayor is inaugurated at 7:30 p.m. on a January 2nd, does his or her term end at 7:29 four years later, or at some other time?

That question is answered by the so-called “indivisible day rule,” under which each day is treated as an indivisible day unit and fractions or portions day are not recognized. *Coley v. Morrow*, 183 Or App 426, 52 P3d 1090 (2002). This rule has been used in criminal cases to determine that defendants who commit crimes on their 16th birthday, but prior to the time of birth, are subject to prosecution as adults, *See Coley*, as well as filing deadlines, e.g., *Beardsley v. Hill*, 219 Or 440, 348 P2d 58 (1959). Under that rule, because the mayor's term commenced on January 2, 1999, it expired as of 11:59 p.m., January 1, 2003.

Cc: Mayor Williams

¹ Chapter V, section 20 of the Oregon City Charter provides that “the mayor shall appoint the committees provided by the rules of the commission.”

Brian Nakamura

Ed Sullivan

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