

AGENDA REPORT

To: Honorable Mayor Joyce & Councilmembers
From: Sarah Dvoracek, City Manager
Date: May 30, 2019
Re: Request to change employee benefit handbook /administration of cemetery

For the Agenda of June 3, 2019

Background. I am requesting approval to remove the job description of the city clerk from the City of Ewart's Employee Benefit Handbook adopted by resolution on February 1, 2016. The city clerk position is not an employee of the city but rather an elected position. The job duties of the city clerk are clearly defined in the city charter, ordinance and state statues (copies att'd).

Issues & Questions Specified. The cemetery's administration would be the only major shift of responsibly which would be given to city employees. The city's administrative staff would handle the selling of lots and graves and handle the scheduling for foundations and burials. Our city employees are full-time and would be able to serve our community in overall better efficiency of tasks and customer service including all involved parties: the community, sexton, funeral directors, and monument companies. We have had several issues in the past and by having trained, dedicated staff would help eliminate the city's liability.

On July 2, 2018, city council voted to approve the purchase of BS&A' s cemetery software and unfortunately minimal cemetery data has been entered since the purchase. The cost of the cemetery software including training and implementation costs was \$3,205.00.

Alternatives.

1. Set aside the decision regarding this matter to a later date.
2. Do nothing.

Financial Impact. Should the city continue to reimburse the city clerk \$40/month if city employees are going to take over the administration of the cemetery?

Recommendation. To better serve the residents and our community, I am recommending the city council approve to remove the city clerk's job description from the employee benefit handbook and began having city employees handle the administration of the cemetery.

Attachments.

1. Charter-city clerk job description
2. City ordinance-job description
3. State MCL 117.24 /117.25 (refenced in the city's ordinance)

and heads of all administrative departments such information and special reports as he or the council may deem necessary;

(g) In case of conflict of authority between officers and administrative departments or, in case of absence of administrative authority occasioned by inadequacy of charter or ordinance provisions, resolve the conflict or supply the necessary authority so far as may be consistent with law and the ordinances of the city, and direct the necessary action to be taken in conformance therewith, making a full report immediately to the council;

(h) Attend all meetings of the council, with the right to be heard in all council proceedings, but without the right to vote;

(i) Recommend to the council, from time to time, such measures as he deems necessary or appropriate for the improvement of the city or its services;

(j) Prepare and maintain an administrative code defining the duties and functions of the several offices and departments of the city which, when adopted by the council, shall supplement this charter in establishing the duties and functions, as established in this charter, of each officer and department of the city;

(k) Furnish the council with information concerning city affairs and prepare and submit such reports as may be required or which the council may request, including an annual report which shall consolidate the reports of the several departments;

(l) See that the terms and conditions in any public utility franchise, or in any contract, are faithfully kept and performed;

(m) Possess such other powers and perform such additional duties as may be granted to or required of him, from time to time by the council so far as may be consistent with the provisions of law;

(n) Establish any rules necessary to carry out any of the foregoing duties.

OFFICERS TO BE APPOINTED:

Section 6.4 The city council shall appoint a city treasurer, finance officer, if there be one, city attorney, assessor, police chief and such other administrative officials as may be established by the council. They shall serve for indefinite terms and may be removed by the council. The council, by resolution, shall set the salaries of the administrative officers.

CITY CLERK:

Section 6.5 (a) The clerk shall be the clerk and clerical officer of the council. He shall attend all meetings of the council, and shall keep its journal.

(b) Keep a record of all actions of the council at its regular and special meetings;

(c) Have the power to administer all oaths required by law and by the ordinances of the city;

(d) Be the custodian of the city seal, and shall affix the same to documents required to be sealed. He shall also be custodian of all papers, documents, and records pertaining to the city, the custody of which is not otherwise provided by this charter;

(e) Give to the proper officials ample notice of the expiration or termination

of any official bonds, franchises, contracts or agreements to which the city is a part;

(f) Notify the council of the failure of any officer or employee required to take an oath of office or to furnish any bond required of him;

(g) Certify all ordinances and resolutions adopted by the council;

(h) The clerk shall perform all duties required of clerks by law and the ordinances of the city;

(i) He shall be responsible for the conduct of elections in the city as required by law.

(j) Perform such other duties in connection with his office as may be required of him by law, the ordinances or resolutions of the council.

CITY TREASURER:

Section 6.6 (a) The treasurer shall have the custody of all moneys of the city and all evidences of value or indebtedness belonging to or held in trust by the city;

(b) Keep and deposit all moneys or funds in such manner and only in such places as the council may determine, and shall report the same in detail to the city council;

(c) Have such powers, duties and prerogatives in regard to the collection and custody of state, county, school district, and city taxes and moneys as are provided by law;

(d) Perform such other duties in connection with his office as may be required of him by law, the ordinances or resolutions of the council, or by the city manager.

DEPUTY CLERK OR TREASURER:

Section 6.7 The clerk and treasurer may appoint and remove their deputies, subject to the budget allowances therefor and the approval of the city council in case of appointments. Each deputy shall possess all powers and authorities of his superior officer.

FINANCE OFFICER:

Section 6.8 (a) The finance officer shall be the general accountant of the city, shall keep the books of account of the assets, receipts, and expenditures of the city, and shall keep the council and city manager informed as to the financial affairs of the city. The system of accounts shall conform to such uniform systems as may be required by law;

(b) Balance all the books of account of the city at the end of each calendar month, and shall make a report thereon, as soon as practical to the city manager;

(c) Upon direction of the city manager, examine and audit all books of account kept by any official or department of the city;

(d) When the council feels that a separate official is required, they may so designate by ordinance and the official will be an appointment.

CHAPTER 232

CLERK

232.01	Position established	232.03	Compensation
232.02	Functions and duties	232.04	Deputy Clerk

CROSS REFERENCES

Clerk generally – see CHTR § 4.3

Functions and duties – see CHTR § 6.5

Compensation – see CHTR § 4.10

Certification of tax levy - see CHTR § 8.11

Filing charters or amendments thereto – see MCLA § 117.24

Filing of initiative petitions – see MCLA § 117.25

232.01 POSITION ESTABLISHED.

The position of City Clerk is hereby established.

232.02 FUNCTIONS AND DUTIES.

(a) The City Clerk shall be the Clerk of the Council and shall attend all meetings of the Council and shall keep a permanent journal of its proceedings in the English language.

(b) The Clerk shall be custodian of the City seal, shall affix it to all documents and instruments requiring the seal and shall attest the same. The City Clerk shall also be custodian of all papers, documents, bonds and records pertaining to the City, the custody of which is not otherwise provided.

(c) The Clerk shall certify by his or her signature all ordinances and resolutions enacted or passed by the Council.

(d) The Clerk shall provide and maintain, in his or her office, a supply of forms for all petitions required to be filed for any purpose by the provisions of the City Charter.

(e) The Clerk shall have power to administer oaths of office.

(f) The Clerk shall perform such other duties as may be prescribed for him or her by the City Charter, or by the Council.

232.03 COMPENSATION.

The City Clerk shall receive an annual salary to be set by the Local Compensation Commission as provided by Charter.

that provided for charter amendments.

History: 1909, Act 279, Eff. Sept. 1, 1909;—Am. 1911, Act 203, Eff. Aug. 1, 1911;—Am. 1913, Act 5, Imd. Eff. Mar. 11, 1913;—CL 1915, 3324;—Am. 1917, Act 6, Imd. Eff. Mar. 9, 1917;—Am. 1917, Act 40, Eff. Aug. 10, 1917;—Am. 1917, Act 232, Imd. Eff. May 10, 1917;—Am. 1919, Act 403, Eff. Aug. 14, 1919;—Am. 1929, Act 279, Eff. Aug. 28, 1929;—CL 1929, 2257;—Am. 1939, Act 279, Eff. Sept. 29, 1939;—Am. 1947, Act 1, Imd. Eff. Jan. 23, 1947;—Am. 1947, Act 87, Imd. Eff. May 12, 1947;—CL 1948, 117.21;—Am. 1955, Act 117, Eff. Oct. 14, 1955;—Am. 2003, Act 303, Eff. Jan. 1, 2005.

Compiler's note: Act 203 of 1911, which amended this section, was held unconstitutional and void. See note to MCL 117.1.

The 1911 amendment reads as follows: "Sec. 21. Any existing charter, whether passed pursuant to the provisions of this act or by the State legislature, may from time to time be amended as follows: An amendment may be proposed by the legislative body on a two-thirds vote of the members-elect or by an initiatory petition as herein provided, and shall be submitted to the electors as herein provided at the next general or special election. When it originates in the legislative body it shall be published and remain on the table for thirty days before action is taken thereon. The form in which any proposed amendment shall be submitted on the ballot, unless provided for in the initiatory petition, shall be determined by the legislative body."

117.22 Charter amendment; submission to governor, approval; re-consideration.

Sec. 22. Every amendment to a city charter whether passed pursuant to the provisions of this act or heretofore granted or passed by the state legislature for the government of such city, before its submission to the electors, and every charter before the final adjournment of the commission, shall be transmitted to the governor of the state. If he shall approve it, he shall sign it; if not, he shall return the charter to the commission and the amendment to the legislative body of the city, with his objections thereto, which shall be spread at large on the journal of the body receiving them, and if it be an amendment proposed by the legislative body, such body shall re-consider it, and if 2/3 of the members-elect agree to pass it, it shall be submitted to the electors. If it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding such objections.

History: 1909, Act 279, Eff. Sept. 1, 1909;—Am. 1913, Act 5, Imd. Eff. Mar. 11, 1913;—CL 1915, 3325;—CL 1929, 2258;—CL 1948, 117.22.

117.23 Publication of proposed charter and amendments; submission of charter and separate propositions to electors; adoption; ballot.

Sec. 23. (1) A proposed city charter and each amendment to an existing city charter before submission to the electors, shall be published as the charter commission or the legislative body may prescribe. A proposed charter may be submitted to the qualified electors as an entirety in a single proposition substantially as follows: "Shall the city charter proposed by the city charter commission be adopted?" Adoption of a proposed charter shall require a simple majority of those voting on the question.

(2) When submitting a proposed charter, separate propositions, on specific charter provisions may also be submitted to the qualified electors. In such case, all propositions shall be in such form as are approved by the attorney general as to clarity and impartiality. If the proposed charter and any of the separate propositions are adopted, the new charter shall take effect with the alternatives or additions contemplated by such separate propositions as are adopted. Adoption of a separate proposition which is an alternative to a provision contained in the proposed charter shall require approval by a majority of those voting on the separate proposition and also a majority of those voting on the proposed charter; otherwise the adoption of a separate proposition shall require a simple majority. The ballot shall contain voting instructions and a brief explanation of the effect of each of the propositions.

History: 1909, Act 279, Eff. Sept. 1, 1909;—Am. 1913, Act 5, Imd. Eff. Mar. 11, 1913;—CL 1915, 3326;—CL 1929, 2259;—CL 1948, 117.23;—Am. 1971, Act 223, Imd. Eff. Dec. 30, 1971.

117.24 Charters or amendments; filing; effective date.

Sec. 24. If the charter, or any amendment thereto, whether of cities incorporated under the provisions of this act, or under an existing charter of the city heretofore granted or passed by the legislature for the government of the city, be approved, then 2 printed copies thereof, with the vote for and against duly certified by the city clerk shall, within 30 days after the vote is taken, be filed with the secretary of state, and a like number with the county clerk of the county in which such city is located and shall thereupon become law, unless a different date for the taking effect of such charter or charter amendment, or any part thereof, is specifically set forth therein.

History: 1909, Act 279, Eff. Sept. 1, 1909;—Am. 1913, Act 5, Imd. Eff. Mar. 11, 1913;—CL 1915, 3327;—CL 1929, 2260;—Am. 1941, Act 175, Eff. Jan. 10, 1942;—CL 1948, 117.24.

117.25 Initiatory petition; filing with city clerk; contents; verification; signatures and inscriptions; perjury and other felonies; punishment; canvass; certifying sufficiency or

insufficiency of petition; causing proposed amendment to be submitted to electors; calling special election; submitting proposal at primary, regular, or special election called for other purposes; initiative proposal receiving majority of votes; proposal contemplating increased expenditure of funds; proposal increasing ad valorem property tax limitation; effective date; tax levy; action against city clerk.

Sec. 25. (1) An initiatory petition authorized by this act shall be addressed to and filed with the city clerk. The petition shall state what body, organization, or person is primarily interested in and responsible for the circulation of the petition and the securing of the amendment. Each sheet of the petition shall be verified by the affidavit of the person who obtained the signatures to the petition. The petition shall be signed by at least 5% of the qualified and registered electors of the municipality. Each signer of the petition shall also write, immediately after his or her signature, the date of signing and his or her street address. A signature obtained more than 1 year before the filing of the petition with the city clerk shall not be counted. The petition is subject to the requirements of section 25a.

(2) A person who willfully affixes another's signature, or subscribes and swears to a verification that is false in any material particular, is guilty of perjury. A person who takes the oath of another to the petition not knowing him or her to be the same person he or she represents himself or herself to be or knowing that the petition or any part of it is false or fraudulent in any material particular, or who falsely represents that the proposed amendment is proposed by persons other than the true sponsors, is guilty of a felony and is liable for the same punishment as provided for perjury.

(3) Upon receipt of the petition, the city clerk shall canvass it to ascertain if it is signed by the requisite number of registered electors. For the purpose of determining the validity of the petition, the city clerk may check any doubtful signatures against the registration records of the city. Within 45 days from the date of the filing of the petition, the city clerk shall certify the sufficiency or insufficiency of the petition. If the petition contains the requisite number of signatures of registered electors, the clerk shall submit the proposed amendment to the electors of the city at the next regular municipal or general state election held in the city which shall occur not less than 90 days following the filing of the petition.

(4) If the petition contains the signatures of 20% or more of the persons residing in and registered to vote in the city as of the date when they signed it, and the petition requests submission of the proposal at a special election, the city clerk, within 90 days after the date of the filing of the petition, shall call a special election to be held on the next regular election date that is not less than 120 days after the petition was filed. Other proposals, whether initiated by a 5% petition or proposed by the legislative body within the times within this act provided, may be submitted at that election. A proposal submitted to the electors by the initiative and receiving an affirmative majority of the votes cast on the proposal shall not be held unconstitutional, invalid, or void on account of the insufficiency of the petition by which the proposal was submitted.

(5) Except as provided by subsection (6), any proposal adopted by the electors that contemplates increased expenditure of funds by the municipality shall become effective only at the beginning of that fiscal year of the municipality commencing not earlier than 60 days following the election at which the proposal was approved by the electors.

(6) If a proposal that increases the city's ad valorem property tax limitation applies, by its terms, for a specific year or period commencing before the date the proposal would otherwise take effect under subsection (5), the proposal shall be effective both from the date it is approved by the electors and retroactively for the year or period specified in the proposal. Notwithstanding a charter provision to the contrary, if a proposal is approved by the electors and given effect under this subsection after the city has levied its ad valorem property tax levy for the fiscal year and if the adopted proposal authorizes the levy of a millage rate for the fiscal year during which the proposal was approved in excess of the rate the city was authorized to levy before adoption of the proposal, the city may levy an additional tax. The additional tax shall be collected either by a supplementary billing by the city or at the same time and in the same manner the county's ad valorem property tax levy is collected.

(7) A person aggrieved by an action, or failure of action, of the city clerk may bring an action against the clerk in the circuit court for writ of mandamus or for other appropriate relief.

History: 1909, Act 279, Eff. Sept. 1, 1909;—Am. 1911, Act 203, Eff. Aug. 1, 1911;—Am. 1913, Act 5, Imd. Eff. Mar. 11, 1913;—CL 1915, 3328;—Am. 1917, Act 6, Imd. Eff. Mar. 9, 1917;—Am. 1919, Act 403, Eff. Aug. 14, 1919;—Am. 1927, Act 187, Eff. Sept. 5, 1927;—CL 1929, 2261;—Am. 1939, Act 279, Eff. Sept. 29, 1939;—Am. 1947, Act 87, Imd. Eff. May 12, 1947;—CL 1948, 117.25;—Am. 1969, Act 114, Imd. Eff. July 29, 1969;—Am. 1982, Act 200, Imd. Eff. July 1, 1982;—Am. 2003, Act 303, Eff. Jan. 1, 2005.

Compiler's note: Act 203 of 1911, which amended this section, was held unconstitutional and void. See note to MCL 117.1.

The 1911 amendment reads as follows: "Sec. 25. The initiatory petitions herein referred to shall be signed at the regular registration or election places at a regular registration or election under the supervision of the officials thereof, who shall verify the genuineness of the signatures and certify the fact that the signers are registered electors of the city and shall be filed with the city clerk. No person shall be