



RESOLUTION No. 2013-3079

A RESOLUTION APPOINTING MR. TRUMAN STONE TO THE POSITION OF CHIEF LEGAL COUNSEL OF THE CITY WITH THE TITLE OF CITY ATTORNEY OF THE CITY OF NEWBERG EFFECTIVE OCTOBER 7, 2013, SUBJECT TO MR. STONE'S ACCEPTANCE

RECITALS:

1. The Charter of the City provides in Chapter VIII, Appointive Officers, Section 35, City Attorney as follows:

“The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney must appoint and supervise, and may remove any city attorney’s office employees.”
2. The City has conducted an extensive hiring process using the services of Mid-Willamette Council of Governments (COG) Executive Director Nancy Boyer.
3. After reviewing applicants, conducting background investigations through the COG, and interviews, the Council has indicated their first choice for City Attorney is Truman A. Stone.
4. The Council has directed the Mayor, present City Attorney, and Council President to enter into discussions with Mr. Stone concerning his possible appointment as City Attorney.
5. Mr. Stone has indicated he desires to serve as Chief Legal Officer for the City and would accept the appointment of City Attorney.
6. By Resolution No. 2013-3079, the City Council is officially appointing Mr. Stone as the City Attorney of the City subject to his acceptance of such an appointment.
7. By entering into the Employment Agreement with the City, Mr. Stone will be accepting the appointment.

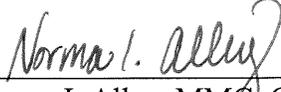
THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council appoints Mr. Truman Stone to the position of the Chief Legal Officer of the City with the title of City Attorney of the City of Newberg. This appointment is subject to his acceptance.
2. The City Council approves the Employment Agreement, which is attached as Exhibit “A” and is hereby adopted and by this reference incorporated.
3. The Mayor is authorized to sign the Agreement on behalf of the City.

4. The effective date of the appointment will be October 7, 2013.

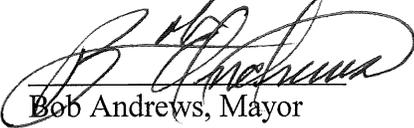
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 17, 2013.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of September, 2013.



Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 19th day of September, 2013.



Bob Andrews, Mayor

EMPLOYMENT AGREEMENT

CITY OF NEWBERG

and

TRUMAN A. STONE

Effective October 7, 2013

EMPLOYMENT AGREEMENT
between
CITY OF NEWBERG
and
TRUMAN A. STONE
CITY ATTORNEY

R E C I T A L S

This Agreement is entered into this 7th day of October 2013, by and between the City of Newberg, Oregon, a Municipal Corporation, hereinafter referred to as "City," and Truman A. Stone, Attorney at Law, hereinafter referred to as "City Attorney," both of whom understand as follows:

1. The Charter of the City of Newberg provides in Chapter VIII, Appointive Officers, Section 35, City Attorney as follows:
"The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney must appoint and supervise, and may remove any city attorney's office employees."
2. The City has conducted an extensive hiring process using the services of Nancy Boyer, Executive Director, of Mid-Willamette Valley Council of Governments (COG).
3. After reviewing applicants, conducting background investigations through the COG, and interviews, the Council has indicated that their first choice for City Attorney is Truman A. Stone.
4. The Council has directed the Mayor and present City Attorney as well as the President of the Council, Bart Rierson, to enter into discussions with Mr. Stone concerning his possible appointment as City Attorney.
5. Mr. Stone has indicated that he desires to serve as Chief Legal Officer for the City and would accept the appointment of City Attorney.
6. The City Council has by Resolution 2013-3079, officially appointed Mr. Stone as the City Attorney of the City of Newberg subject to his acceptance of such an appointment.
7. By entering into this Agreement, Mr. Stone accepts the appointment to the position of City Attorney.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Mr. Stone hereby agree as follows:

1. APPOINTMENT. The City appoints and Mr. Stone hereby accepts the position as the Chief Legal Officer of the City with the title of City Attorney of the City of Newberg. This appointment is effective 7th day of October, 2013 at which time Mr. Stone accepts the duties and responsibilities of the position. This appointment is in accordance with the Newberg City Charter, VIII, Appointive Officers, Section 35, City Attorney.

2. DUTIES.

A. The City hereby employs the City Attorney to perform the functions and duties specified in said City Charter and to perform such other legally permissible and proper duties the City Council shall from time to time assign. Attached for general guidance as to the duties and functions of the office is the job description, which is attached as Exhibit "A", and by this reference incorporated.

B. The City Attorney shall devote full time to the performance of his duties and shall not perform any additional legal services, nor shall City Attorney represent any other client, whether for remuneration or pro bono, without the approval of the City Council, as provided herein. In the event the City Attorney desires to teach, consult or provide legal services to another party or person, he shall first provide written notice of such intent to the Mayor and each member of the City Council. If after ten (10) days from sending notice, the Mayor or any member of the City Council does not inform the City Attorney of an objection, the City Attorney may perform the requested teaching, consulting or outside legal services. In the event the Mayor or any member of the City Council, within ten (10) days of sending notice, informs the City Attorney of an objection, the City Attorney shall not perform the requested teaching, consulting, or outside legal services, without first obtaining formal approval by a majority of the City Council. In no event shall the City Attorney perform teaching, consulting or outside legal services that would create a conflict with his position of City Attorney or conflict with the best interest of the City. Any objection by the Mayor or a member of the City Council shall be based upon the best interests of the City. In performing any teaching, consulting or outside legal services, the City Attorney may use accrued administrative and/or vacation leave.

C. It is recognized that Mr. Stone has an active private practice as a shareholder in the law firm of Brown, Tarlow, Bridges, Palmer & Stone PC. It is recognized that it may take some time even after Mr. Stone assumes the office of City Attorney to complete his professional obligations to clients and on-going legal matters. Regardless of Paragraph "B" above, the City grants Mr. Stone the permission to fulfill his professional obligations to these pre-existing clients using his own time as long as there is no conflict of interest between his duties as City Attorney. In no event, shall this obligation to complete his professional obligation to on-going clients take place longer than six (6) months after acceptance of City Attorney position. He may account for the time by use of accrued

administrative and/or vacation leave.

3. TERM.

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Mayor, with the consent of the City Council, in accordance with the City Charter, from terminating the services of the City Attorney, and otherwise dismissing him from employment, at any time, without the showing of any cause, subject only to the provisions set forth in Section 12, Severance Pay, except that Section 12, Severance Pay, shall not be applicable to a termination and dismissal occasioned for the reasons set forth in Section 4, below.

B. This Agreement is for an initial term of approximately five (5) years, commencing on the date entered into as above-stated and continuing until December 31, 2018.

C. This Agreement may be extended by mutual agreement of parties. The parties shall discuss extension of the contract on or before six (6) months prior to the end of the initial term.

4. CAUSE FOR TERMINATION & DISCIPLINE. The City shall have no obligation to pay the aggregate severance sum designated in the Section 12 entitled "Severance Pay" in the event the City Attorney is terminated during the term of this Agreement for the following reasons:

A. The City Attorney is convicted of a misdemeanor involving moral turpitude, convicted of a felony, indicted for a crime(s), or for loss or suspension of his Oregon Bar license. In the event the City Attorney is not convicted of said crime(s) or does not plead guilty to other crime(s) in settlement of charges for which he was indicted, he shall receive the severance pay in accordance with Section 12. However, he will not be entitled to pay for time following termination for indictment until severance pay is paid.

B. His termination for just cause as provided in the City's personnel rules. Examples of terminations for just cause include but are not limited to: failure to be truthful during internal investigation, falsifying official reports, and other action that may reasonably prevent him from carrying out his duties as City Attorney. The City Attorney shall be given fair notice of the cause that could lead to his termination and reasonable opportunity to respond prior to termination. The City expects the City Attorney to adhere to the highest professional standards. His actions shall always comply with those standards.

C. It is recognized that the City Attorney works without close supervision and it may be necessary to investigate any allegations being brought against the City Attorney. In the event the Council has reasonable grounds to conduct such an investigation, the City Attorney may be placed on administrative leave without pay for a maximum of two (2) weeks, while such an investigation occurs. If the investigation does not result in termination or discipline of the City Attorney, the City Attorney shall be compensated for the two (2) weeks leave.

D. It is recognized that the City is not obligated to conduct any type of progressive discipline with the City Attorney and that any type of discipline necessary to the City Attorney has extreme impact on his ability to perform the duties of the City Attorney. However, in the event the City Council takes disciplinary action, which is less than termination, the City may suspend the City Attorney without pay for a period not-to-exceed two (2) weeks. Suspension beyond that time shall be considered termination.

E. In the event the City Attorney is terminated for just cause and in resulting litigation a court of competence jurisdiction rules that there was not just cause to terminate the City Attorney, the only remedy available to the City Attorney is payment of severance pay set out in Section 12. The City shall have no obligation to re-instate the City Attorney.

5. RESIGNATION. In the event the City Attorney wishes to voluntarily resign his position during the term of this Agreement, he shall be required to give the City two (2) months' written notice of such intention. The City Attorney will cooperate in every way with the smooth and normal transfer to the newly appointed attorney. Further, the City Attorney will be available for consultation concerning ongoing legal matters and will not in any way jeopardize the legal position of the City. Consultation after term of employment has ended due to resignation shall be done on a fee basis. A voluntary resignation does not invoke Section 12, Severance Pay.

6. COMPENSATION. The City agrees to pay the City Attorney the following as compensation for the above-mentioned services as City Attorney:

A. Base Salary: An annual base salary of \$104,220.00. commencing October 7, 2013, and payable in installments at the place and time as other City employees are paid. The base salary may be adjusted by the City Council from time to time. Compensation may be increased by the budget process as other employees receive increases such as by cost of living increase. The City Attorney shall be entitled to cost of living increases as other general employees receive.

B. Retirement: The City Attorney shall be placed in the Public Employee Retirement System effective after six (6) months of service. The City shall pay the employees' portion to PERS. This is in accordance with other managerial employees of the City.

C. Fringe benefits: The City Attorney is entitled to other fringe benefits equal to that of other employees employed in the administrative capacity, which includes medical benefits, except the City shall pay the amount of a premium due for term life insurance in the amount of three (3) times the City Attorney's annual salary, including all increase and base salaries of the life of this agreement. The City Attorney shall name the beneficiary of the life insurance policy.

D. The City hereby agrees to pay the expenses of the City Attorney's necessary travel and living expenses to represent the City at the annual League of Oregon Cities'

Conference, and conferences or meetings of state committees or commissions upon which the City Attorney serves as a member, said membership on said state commissions or committees being subject to the approval of the City Council, and for such other official meetings or travel as are reasonably necessary for the professional advancement of the City Attorney as approved by the City Council. Expenditures of these expenses are subject to the budgetary process of the City.

E. The City hereby agrees to pay the normal business expenses of the City Attorney such as travel expenses, mileage, and other normal out of pocket business expenses at the rate designated by the personnel manual and subject to the budgetary process of the City.

F. The City shall support the City Attorney with equipment and other electronic means such as cellular telephone in accordance with the practices of other managerial personnel of the City. Since the City Attorney is a Charter appointed position, similar to the City Manager, it is anticipated the City Attorney will receive the same level of support, expenses, and equipment as the City Manager. Such expenses are subject to the budgetary process of the City.

7. SICK LEAVE AND VACATION.

A. Sick Leave. The City Attorney shall accrue sick leave as provided by the City's personnel rules.

B. Vacation. The City Attorney shall accrue vacation time in accordance with the City's personnel rules except that the City Attorney shall accrue at the rate provided for employees with five (5) years seniority. When the City Attorney has reached five (5) years of service, accruals shall be in accordance with the City Attorney's actual length of service.

8. ADMINISTRATIVE/LEAVE. The City Attorney shall be credited with fifteen (15) days of administrative leave at the time of entering into this Agreement. Such leave is non-accumulative from one fiscal year to the next. Should City Attorney leave the employ of the City for any reason, then any remaining administrative leave shall be forfeited without remuneration of any kind.

9. ATTENDANCE AT NATIONAL CONFERENCES. The City Attorney is allowed to attend national conferences as the budget of the City allows.

10. EVALUATION. The City Council shall evaluate the work performance of the City Attorney annually in or around the month of December, but no later than December 31st of each year. The City Council shall communicate its evaluation to the City Attorney in Executive Session. The failure of the City Council to conduct an annual evaluation shall not operate as a defense to any action by the City with respect to this Agreement or the employment of the City Attorney. Consideration shall be given on an annual basis to adjust compensation at or about the time of the evaluation.

11. OREGON STATE BAR LICENSE. The City Attorney shall maintain throughout the life of this Agreement, a valid Oregon State Bar license as required by the State of Oregon in order to practice law and appear before the courts of this State. The City shall pay the City Attorney's annual Bar dues.

12. SEVERANCE PAY. In the event of any involuntary termination of the City Attorney during the term of this Agreement, he shall be entitled to severance pay in the manner as follows:

A. City shall provide a minimum severance payment equal to six (6) months salary at the current rate of pay including the cost of health insurance. This severance shall be paid as a lump sum unless otherwise agreed to by City and City Attorney. The sum shall be paid within 30 days of termination.

B. City Attorney shall be compensated for all accrued vacation time.

C. Termination by the City, as used in this paragraph, means the City Attorney's discharge or dismissal by the Mayor with consent of the City Council or the City Attorney's resignation following a salary reduction greater in percentage than an across-the-board reduction for all employees or failure to receive a salary increase equal to the increase received by all employees (commonly known as cost of living increase), or the City Attorney's resignation following a formal request to him by the City Council that he resign. This provision does not apply to a voluntary resignation by City Attorney.

D. Despite any contrary provision of Section 4, Cause for Termination, this Section 12, or any other part of this Agreement, all severance pay under this Section 12 shall be paid only on or after the date the City Attorney has a separation from service with the employer within the meaning of Treasury Regulation Section 1.409A-1(h), using none of the options in Treasury Regulation Section 1.409A-1(h), and no later than the last day of the City Attorney's second taxable year following the City Attorney's taxable year in which the separation from service occurs.

13. PROFESSIONAL LIABILITY. The City agrees that it shall defend, hold harmless, and indemnify the City Attorney from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the City Attorney in his individual capacity or in his official capacity, or in his official capacity as agent or employee of the City, provided the incident arose while the City Attorney was acting within the scope of his employment. If in the good faith opinion of the City Attorney, a conflict exists as regards to the defense of any such claim between the legal position of the City and the City Attorney, the City Attorney may engage counsel, in which event, the City shall indemnify the City Attorney for the cost of legal counsel.

14. APPLICABLE LAW. This Agreement is construed under the laws of the State of Oregon and the Charter of the City of Newberg.

15. ATTORNEY'S FEES. In the event of any suit or action herein, the prevailing party in

CITY OF NEWBERG
Position Description

TITLE: City Attorney

SALARY RANGE: \$104,220 - \$133,014

DEPARTMENT: Legal

LOCATION: City Hall

CHARTER LEVEL:

- **Position:** The Charter designates the city attorney position.
- **Personnel:** Legal department staff are supervised on a day-to-day basis and reviewed by the city attorney. The city attorney works under the guidance of the City Council and is subject to its direction.
- **Budget:** The city attorney is responsible for preparing and administering the budget for the legal department.

DIVISION: Office of City Attorney

DATE: April 24, 2013

GENERAL PURPOSE:

Performs high-level administrative, technical, and professional work in negotiating and finding creative solutions to issues in effort of preventing potential claims and lawsuits, drafting legal documents, preparing court briefs, prosecuting crimes, responding to and conducting civil lawsuits, advising city elected officials and staff as to legal rights, limitations, and obligations; and other legal practices applicable to state, local and federal law.

The city attorney is an appointive officer of the city as provided for in Chapter VIII, Section 35 of the Charter. This excerpt follows:

Section 35. City Attorney.

The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney must appoint and supervise, and may remove any city attorney's office employees.

SUPERVISION RECEIVED:

The city attorney works under the broad policy guidance of the City Council, and is subject to its direction.

SUPERVISION EXERCISED:

The city attorney shall exercise supervision over all legal department employees either directly or through subordinate supervisors.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES

- Extensive knowledge of state statutes relating to municipal affairs, and laws relating to the purchase of goods and services, contracting, labor, employment, land use, environment, and traffic.
- Working knowledge of modern policies and practices of municipal law and public administration.
- Knowledge of state laws and local ordinances, resolutions, and orders; ensures that they are faithfully performed.
- Skill in preparing briefs and enforcing all provisions of the City's franchises, leases, contracts, and other legal documents.
- Ability to prepare and analyze comprehensive legal reports; ability to carry-out assigned projects to their completion; ability to effectively communicate verbally and in writing; ability to establish and maintain effective working relationships with employees, City officials, the court system, and the public; ability to efficiently and effectively administer a municipal legal department.
- Demonstrate effective personal traits such as initiative, creativity, judgment, fairness, and impartiality; demonstrates respect for individuals and City's franchises, leases, and contracts.
- Ability to foster a work environment that supports and encourages the investigation and implementation of innovative applications.

MINIMUM QUALIFICATIONS FOR EDUCATION, EXPERIENCE, AND LICENSURE

Graduation from an accredited law school with a Juris Doctor degree in law, three (3) years of experience as a practicing attorney, a license to practice law in the state, member in good standing of the state Bar Association, and a valid state driver's license.

TYPICAL EXAMPLES OF WORK:

The city attorney may perform a combination of some or all of the following duties that are a representative sample of the level of work appropriate to this position. However, these examples do not include all duties that an employee may be expected to perform, as directed by the City Council. The following examples do not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of employer and requirements of the job change consistent with contract of employment.

1. Management:

- a. Responsible for the management and supervision of the legal department to achieve goals within available resources by appropriately delegating duties.
- b. Oversees the administration of workloads and staff assignments by studying, standardizing, and determining work roles, responsibilities, and procedures to improve efficiency and effectiveness of operations; preparing work schedules to expedite workflow.
- c. Appoints and removes all department staff.
- d. Assures the training, motivation, and evaluation of legal department staff and directs changes as needed.

Exhibit "A"
to Employment Agreement

2. Planning Goals:
 - a. Provides leadership and direction in the development of short and long-range plans with the legal staff and City Council.
 - b. Administers plans, reviews progress, and directs changes as needed, based on new developments in technology, legislation, practices, and regulations.
 - c. Investigates, integrates, and implements technology where administratively and fiscally feasible.
 - d. Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
 - e. Coordinates department activities with other departments and agencies as needed.
3. Communications:
 - a. Provides written and oral professional legal advice to the City Council, city manager, and department heads in a timely, clear, thorough, and concise manner.
 - b. Communicates official plans, policies, and procedures to legal department staff and to the public.
 - c. Presents information to councils, boards, commissions, civic groups, and to the general public.
 - d. Production of the weekly "Legal Bulletin" to the City Council.
 - e. Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
 - f. Maintains harmony among legal department staff and works to resolve grievances, including giving and accepting direction and instructions in a positive manner.
4. Fiscal Agent:
 - a. Assures that assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities, and time pursuant to ORS Chapters 291-297.
 - b. Performs cost control activities and monitors revenues and expenditures in all departments, to assure sound fiscal control and to encourage innovative practices.
 - c. Prepares an annual legal department budget and administers the adopted budget.
5. Community Relations:
 - a. Performs and assists legal department staff in performing duties to adjust errors and to address complaints.
 - b. Projects a positive public image and is courteous to the public at all times.
 - c. Maintain effective relations with media representatives.
 - d. Promotes cooperation among the City Council, staff, and citizens in developing policies and to build a sense of community.
6. Intergovernmental/Interagency Relations:
 - a. Maintains effective communication with local, regional, state, and federal government agencies.
 - b. Provides legal advice to City staff pursuing financial resources (grants) from other agencies.
 - c. Contributes to good government through participation in local, regional, state, and professional committees and organizations.
 - d. Confers with colleagues with specialty areas of law to establish and verify basis for legal proceedings; and serves as a liaison between outside legal counsel and City officials on specialized legal issues.

7. Consultative Legal Services:

- a. Advises the City Council of legal conditions with current and future trends; issues legal opinions.
- b. Advise City officials of changes to state or federal laws affecting City operations.
- c. Interprets laws, rulings, and regulations for City officials and staff.
- d. Recommends for adoption by the City Council such measures deemed necessary and expedient.

8. Legal Preparation:

- a. Drafts ordinances, resolutions, contracts, agreements, deeds, leases, and franchises; reviews documents prepared by other departments, agencies, and parties.
- b. Approves ordinances, resolutions, and contracts as to legal form; provides legal advice as to substance.
- c. Gathers evidence in civil, criminal, and other cases to formulate defense or to initiate legal action; conducts research; interviews clients and witnesses, and handles other details in preparation for trial; prepares legal briefs, arguments and testimony; develops strategy in preparation for presentation in cases; files briefs in the appropriate court.
- d. Represents the City in court and before quasi-judicial or administrative agencies of government.

WORK CONDITIONS:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individual's with disabilities to perform the essential functions.

1. Must be bondable.
2. Ability to deal with distraught or difficult individuals.
3. Ability to attend monthly staff meetings and activities outside of normal working hours.
4. Ability and willingness to travel as needed and perform the duties and responsibilities.
5. Serves as city manager pro tem in the absence of the city manager and assistant city manager from the City.

REQUIRED TOOLS AND EQUIPMENT USED:

Skilled in operating personal computer, including word processing, database, and spreadsheet management, motor vehicle; ten-key calculator; phone; copy, scanner, and fax machine.

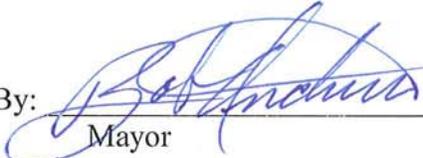
PHYSICAL DEMANDS:

While performing the duties of this job, the employee is frequently required to talk or hear; sit; use hands to handle, feel or operate objects, tools, or controls; and reach with hands and arms; stand or walk for considerable distances or time. Must occasionally lift and move up to 25 pounds. Specific vision abilities include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

SELECTION GUIDELINES:

The selection process includes a formal application; rating of education, experience, and certification; oral interview; and reference and background checks.

Approval by Motion on this 1st day of May, 2013.

By: 

Mayor

Signature Attest that Motion was duly passed accepting position description
Effective Date: July 1, 2013

Revision History: Adopted and approved July 6, 2010, via Resolution No. 2010-2912