

RESOLUTION NO. R17-74

RESOLUTION OF THE CITY COUNCIL APPOINTING A MAYOR TO SERVE UNTIL THE CITY'S NEXT GENERAL ELECTION TO BE EFFECTIVE ONLY IF THE MAYOR ELECT FAILS TO RESIGN HIS CURRENT CITY EMPLOYMENT RENDERING HIM UNABLE TO SERVE AS THE CITY'S ELECTED MAYOR WHILE REMAINING A CITY EMPLOYEE.

WHEREAS, the City of Laurel's Charter vests the Mayor with the exclusive authority to hire and terminate employees of the City without restriction; and

WHEREAS, as a result of the City's Charter, it is not legally permissible for a city employee to serve concurrently as the mayor since the mayor and city employee positions are incompatible positions; and

WHEREAS, both the Montana Supreme Court and Attorney General have determined that pursuant to the doctrine of "incompatible positions" it is contrary to the public interest for a public employee to serve as both an employee and employer, or a supervisor and supervised, at the same time; and

WHEREAS, as a result of the November 7, 2017 Election, the voters elected Dave Waggoner who is employed by the City as a water plant operator, to serve as the City's Mayor; and

WHEREAS, the City Council has determined that the City of Laurel's Mayor and a City employee constitute incompatible positions based on the fact the Charter specifically reserves the authority to terminate any city employee to the mayor; and

WHEREAS, if Dave Waggoner were to serve as mayor while remaining an employee, he would constitute both the employee and employer, supervisor and supervised, in direct contravention of the doctrine of incompatible positions which prohibits such an action; and

WHEREAS, the City Council determined that it is in the City's best interest to have a contingency plan in place for the mayor position in case Dave Waggoner determines he is either not able or unwilling to resign his city employment rendering him unable to serve concurrently as the City's mayor and water plant operator thereby resulting in a vacancy in the mayor position; and

WHEREAS, the City publicly advertised for eligible residents interested in serving as mayor in case the position were to become vacant, and as a result interested candidates for the mayor position have applied by the deadline provided in the Notice that was published; and

WHEREAS, the City Council reviewed the applications submitted to the City by the applicants and provided each applicant the opportunity to make a presentation to the City Council regarding their desire to serve as the City's Mayor; and

WHEREAS, based on the applications and presentations the City Council determined that Thomas Nelson is eligible and best able to serve as the City's Mayor if the mayor

position is vacant and/or open at the first Regular City Council Meeting to be held on January 2, 2018.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Laurel, Montana,

1. That Thomas Nelson is hereby appointed as the City's Mayor pursuant to Section 5.03 of the City of Laurel Charter until the City's next General Municipal Election to be held November, 2019.
2. That such appointment shall become immediately effective on January 2, 2018 if the mayor position is open and vacant due to the Mayor-Elect Dave Waggoner's failure to resign his city employment (Water Plant Operator) since the Mayor and Water Plant Operator are incompatible positions and serving in both capacities is not permissible pursuant to the laws of the State of Montana.
3. That Thomas Nelson shall be immediately sworn into office at the City Council Meeting on January 2, 2018 unless the Mayor-Elect resigns his city employment and chooses to serve as Mayor.
4. If the Mayor-Elect resigns his position and accepts the Mayor Position, this Resolution shall become immediately null and void and of no further effect, and Dave Waggoner shall be sworn into the Mayor Position.

Introduced at a regular meeting of the City Council on December 26, 2017 by Council Member Poehls.

PASSED and APPROVED by the City Council of the City of Laurel this 26th day of December, 2017

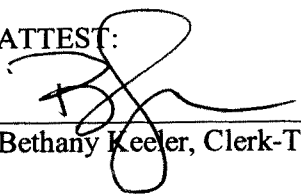
APPROVED by the Mayor this 26th day of December, 2017.

CITY OF LAUREL



Mark A. Mace, Mayor

ATTEST:



Bethany Keeler, Clerk-Treasurer

Approved as to form:



Sam S. Painter, Civil City Attorney