


## COUNCIL COMMUNICATION

Meeting Date: October 13, 2020	Agenda Item: 12A	Agenda Location: Action Items	Goal(s):	Legal Review: 	<input type="checkbox"/> 1 <sup>st</sup> Reading <input checked="" type="checkbox"/> 2 <sup>nd</sup> Reading
Subject: An ordinance amending Section 2-88 of the Thornton City Code pertaining to the Judicial Appointment and Retention Advisory Commission.					
Recommended by: Joyce Hunt <i>JH</i>			Approved by: Kevin S. Woods <i>KW</i>		Ordinance previously introduced by: <u>Phillips</u>
Presenter(s): Joyce Hunt, Assistant City Manager					

**SYNOPSIS:**

On September 22, 2020, City Council voted 6-3 to approve this ordinance on first reading.

This ordinance amends Section 2-88 of the Thornton City Code (City Code) to incorporate changes that became evident after the first year of operation to improve the functioning of the Judicial Appointment and Retention Advisory Commission (Commission). The following changes were discussed with Council at the July 21, 2020 Planning Session:

- removing the City Manager and City Attorney, or designee, and the Presiding Municipal Judge as non-voting, ex-officio members of the Commission
- clarifying language that the application process would occur every two years, starting in 2019, unless Council requests an additional application
- removes the requirement for the Commission to provide a list of applicants equal to the number of vacancies plus three and just requires the Commission to submit a list of qualified applicants to Council in addition to a recommendation to reappoint, not reappoint, or state no opinion of Associate Judges requesting reappointment

In addition to the above, staff is proposing the following additional changes:

- includes language that gives the Presiding Municipal Judge an opportunity to provide comments on the confidential recommendation of the Commission prior to the recommendation being submitted to City Council (language included in the three other cities who have Commissions: Aurora, Grand Junction, Greeley)
- includes language to clarify that meetings of the Commission with the Presiding Municipal Judge's performance and deliberation are confidential sessions
- clarifies that if surveys or questionnaires are done (which has been a past practice of Council), surveys are to include individuals who have direct and/or continuing contact with the presiding municipal judge, including attorneys who practice before the judge, including but not limited to Court-appointed counsel, the City Attorney's office and the private defense attorneys, together with jurors, law enforcement officers, probation officers, defendants, and Court personnel, and that a report of the compiled responses including comments, shall be provided to the Commission and the Presiding Municipal Judge
- changes "interview" the Presiding Municipal Judge to "meet" with and deleted sentence requiring interview questions to be provided to the Presiding Municipal Judge in advance of the meeting.

**RECOMMENDATION:**

Staff recommends Alternative No. 1, approval of the ordinance amending the City Code to change select provisions to improve the functioning of the Commission.

**BUDGET/STAFF IMPLICATIONS:**

None.

**ALTERNATIVES:**

1. Approve the ordinance to amend the City Code to change select provisions to improve the functioning of the Commission.
2. Do not approve the ordinance.

**BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):** (includes previous City Council action)

The proposed changes were reviewed by City Council at the July 21, 2020 Planning Session.

The Commission also discussed what worked, did not work, and what changes should be considered after concluding the first year of operation at its February 13, 2020 meeting as follows:

1. What Worked:
  - a. Access to audio as well as “in-court” observation of the Presiding Judge
  - b. Associate Judge interview process
  - c. Methodology used to develop Associate Judge list
  - d. Survey Information, particularly comments
  - e. Third party compiled survey results
2. What Did Not Work:
  - a. Survey Information provided in two pieces
  - b. Confusion as to the role of the ex-officio members with respect to attendance in the review meetings between the Presiding Judge and the Commission and deliberations.
3. What Changes Should be Considered:
  - a. Would like to see Survey information contain the compiled results of all those who participated in the surveys (defendants, defendant attorneys, jurors, witnesses, prosecutors, law enforcement, and Court staff) along with the comments.
  - b. Would like to consider expanding the Survey to include Associate Judges.
  - c. Would like clarification as to the role of the ex-officio members in the Presiding Judge review and deliberations.
  - d. Would like to see the ordinance be revised to change the language regarding “interviewing” the Presiding Judge to “meet with” and also remove the language requiring the interview questions to be provided to the Presiding Judge in advance of the meeting with the Commission.
  - e. Would like to see consideration given to whether the interviews/meetings and deliberations of the Commission with the Presiding Judge and/or Associate Judges should be considered personnel matters and therefore closed to the public.
  - f. One Commissioner would like to see the Judge get the survey results and one Commissioner did not want to see the Judge get the survey results.

INTRODUCED BY: Phillips

AN ORDINANCE AMENDING SECTION 2-88 OF THE THORNTON CITY CODE PERTAINING TO THE JUDICIAL APPOINTMENT AND RETENTION ADVISORY COMMISSION.

WHEREAS, the Judicial Appointment and Retention Advisory Commission (JARAC) was established on September 26, 2018; and

WHEREAS, JARAC has completed its initial year of operation and staff and JARAC have identified several changes that would improve the functioning of JARAC; and

WHEREAS, the City Council desires to amend the City Code to improve the functioning of the operation of JARAC.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 2-88 of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

**Sec. 2-88. - The Judicial appointment and retention advisory commission.**

- (a) *Creation.* There is hereby created the judicial appointment and retention advisory commission (commission).
- (b) *Purpose and Functions.* The judicial appointment and retention advisory commission shall recommend to city council qualified candidates for appointment and whether to retain judges.
- (c) *Membership.*
  - (1) *Composition.* The commission shall be composed of five voting members appointed by city council. As much as practicable, council will appoint a member from each ward and an at-large member. At minimum, no ward shall have more than two members on the commission. Two of the members shall be licensed attorneys. The council shall appoint one attorney with experience in criminal prosecution and one attorney with experience in criminal defense unless there are no applicants to appoint one from each practice.

- (2) *Ineligible to serve.* Justices and judges actively performing judicial duties may not be appointed to serve on the commission. No member shall, at the time of the appointment or thereafter while serving on the commission, be an officer or employee of the city or be an employee or business associate of an attorney, law office, or law firm contracting with the city to provide criminal defense legal services.
- (3) *Application for appointment.* After creation of, and upon any vacancy of the commission, the city clerk shall advertise and open up an application period for which citizens desiring appointment to the commission may apply. City council shall review the applications and appoint members in conformance with the indicated composition.
- (4) *Term.* The members shall be appointed to serve four-year overlapping terms ending on March 1 of even-numbered years; except that two members will initially be appointed for a two-year term of office ending March 1, 2020; thereafter, the term for these members shall be four years.
- (5) *Compensation.* Members shall receive compensation for their services as provided in the code.
- ~~(6) In addition to the commission members, the presiding judge, the city attorney (or designee, not a prosecuting attorney) and the city manager (or designee) shall be non-voting, ex-officio members, and be available to answer questions of commission members and/or the interviewees for associate municipal judges with regard to the administration, operation, and activity levels of the municipal court.~~
- (d) *Officers; bylaws; meetings.* The commission shall designate a chairperson, vice-chairperson, and such other officers as it may deem appropriate and shall prepare and submit to the city council, for approval, bylaws for the procedural conduct of meetings of the commission.
- (e) *Appointment/reappointment of associate municipal judges.* The commission shall assist the city council in the appointment/reappointment of associate municipal judges as provided as follows:
- (1) *Applications and minimum qualifications.* ~~If council finds a need or desire to appoint one or more associate municipal judge(s),~~ An application period shall be announced for interested persons to apply every two years commencing in 2019 or sooner if requested by council. Minimum qualifications include five years as a licensed attorney and five years of prosecution/defense and/or judicial experience. Other information to be

provided, such as letters of recommendation, will be listed in the application. The human resources division will screen the applications for the minimum qualifications established by this section. Upon receiving the screened applications, the commission will interview applicants based on interview questions provided by the city, determine a scoring/ranking methodology prior to interviews, and provide a list of the ~~top-ranked~~ recommended applicants to the city council and city clerk who will move forward to the public comment process. ~~The number of names forwarded shall equal the number of vacancies plus three.~~

- (2) *Advertisement for applications.* All advertisements for applications required in this section shall include sending the notice to the Colorado Bar Association, the Denver and Adams/Broomfield Bar Associations, the Minority and Women's Bar Associations, and posting the advertisement in a conspicuous place on the city's website.
- (3) *Reappointments.* Associate judges desiring to be reappointed shall notify the commission in writing indicating their interest no later than October 1 prior to the end of their current appointment. The commission will ~~interview-meet with~~ the associate judges and shall provide city council a confidential recommendation to reappoint, not reappoint, or state no opinion. The names of the associate judges requesting reappointment will move forward to the public comment process.
- (4) *Public comment process.* The city will advertise the names of candidates under consideration, including the names of judges seeking reappointment, for a ~~fourteen~~14-day period and the public may submit written comments on any candidate. The deadline for comments shall be no less than 15 days, which can overlap with the 14-day publication period. All comments submitted by the public will be provided to the city council.
- (5) *Reappointment of the presiding municipal judge.* The commission shall annually provide the city council, in advance of the annual performance evaluation meeting between the presiding municipal judge and the city council, a confidential recommendation to reappoint, not reappoint, or state no opinion. Such recommendation shall be accompanied by an explanation. The recommendation and explanation shall be provided to the presiding municipal judge 10 days prior to the commission submitting it to the city council, during which time the judge may submit a written response to the commission's evaluation which shall become a permanent attachment to the recommendation. As part of the evaluation, the commission shall observe the presiding municipal judge in court and/or listen to the audio of the court proceedings. ~~The commission shall~~ and also ~~interview-meet with~~ the presiding

municipal judge as to the presiding municipal judge's performance operation of the court over the evaluation period. The meeting with the presiding municipal judge and the deliberations of the commission pertaining to the evaluation and deliberations related to the confidential recommendation shall be confidential. The interview questions shall be provided to the presiding municipal judge in advance of the interview. If surveys or questionnaires of individuals who have direct and/or continuing contact with the presiding municipal judge, including attorneys who practice before the judge, including but not limited to Court-appointed counsel, the City Attorney's office and the private defense attorneys, together with jurors, law enforcement officers, probation officers, defendants, and Court personnel, are conducted, a report of the compiled responses including comments, such information shall be provided to the commission and the presiding municipal judge. The commission's recommendation shall be based solely upon the following criteria: integrity; knowledge and understanding of the law; communication skills; preparation, attentiveness, and control over judicial proceedings; consistency and applicability of sentencing practices; docket management, prompt case disposition, and administrative skills; courtroom demeanor; and overall judicial performance.

- (f) The creation of the commission shall not in any fashion abridge the authority possessed by the city council who retains the sole discretion to appoint, reappoint, and remove the presiding municipal court judge and associate judges. The commission serves as an advisory body to the city council, and its confidential evaluations shall be considered solely recommendations for the benefit of city council.
2. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
  3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
  4. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any

judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

5. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on September 22, 2020.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2020.

CITY OF THORNTON, COLORADO

\_\_\_\_\_  
Jan Kulmann, Mayor

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Luis A. Corchado, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on September 23, 2020, and after second and final reading on \_\_\_\_\_, 2020.