

**ORDINANCE 374**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK  
REPEALING AND REENACTING CHAPTER 2.06 AND AMENDING SECTION 2.08.010  
OF THE SUTTER CREEK MUNICIPAL CODE REGARDING  
THE OFFICE OF CITY MANAGER**

The City Council of the City of Sutter Creek, California does ordain as follows:

Section 1

Chapter 2.06 of the Sutter Creek Municipal Code is repealed and reenacted as follows:

**Chapter 2.06 CITY MANAGER**

**2.06.010 Office created.**

The office of the city manager of the city is created and established. The city manager shall be appointed by the city council solely on the basis of his/her executive and administrative qualifications. She/he shall hold office pursuant to a contract entered into between the city and the city manager. The City of Sutter Creek operates under a council/manager form of government wherein the city council is responsible for setting city policy and the annual budget, and the manager is responsible for implementing that policy and guiding city expenditures in accordance with the budget priorities. Whenever a reference is made to "city administrator" or "city director," in this Code or in any other preexisting ordinance, resolution or action, that reference shall be deemed to mean "city manager" within the meaning of this Chapter.

**2.06.020 Administrative head of city.**

The city manager shall be the administrative head of the city government. She/he reports directly to the full city council and receives direction therefrom, but is not responsible to any individual council member. The manager shall have authority, including hiring, discipline and termination, over all department heads, employees, and all contract and professional employees, with the exception of the city attorney.

**2.06.030 Powers and duties.**

The city manager shall be responsible for the efficient administration of all the affairs of the city that are under his/her control. In addition to those general powers as administrative head, and not as a limitation thereon, it shall be his/her duty and she/he shall have the powers set forth as follows:

- A. Enforcement. It shall be the duty of the city manager to enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the city council are faithfully observed.
- B. Authority Over Employees. It shall be the duty of the city manager and she/he shall have the authority to control, order and give directions to all heads of departments and

to subordinate officers, employees, and all contracted and professional employees of the city under his/her jurisdiction, including hiring, discipline and termination.

- C. Administrative Organization of Offices. It shall be the duty and responsibility of the city manager to organize the department structure and scheduling of all employees in order to promote the efficient, effective and economical conduct of the city's business.
- D. Ordinances. It shall be the duty of the city manager to recommend to the city council for adoption such measures and ordinances as she/he deems necessary.
- E. Financial Reports. It shall be the duty of the city manager to keep the city council at all times fully advised as to the financial condition and needs of the city.
- F. Budget. It shall be the duty of the city manager to prepare and submit the proposed annual budget to the city council. The manager shall also propose an annual salary schedule for current and anticipated employees for the city, and shall be responsible for representing the city in negotiating the collective bargaining agreements with the city's employee associations. Final approval of both budget and employee negotiations requires majority approval of the city council.
- G. Purchasing Agent. It shall be the duty of the city manager to oversee the purchase of all supplies, equipment, services and other needs for all departments and divisions of the city in accordance with the city's adopted budget and the city's purchasing policy.
- H. Investigations and Complaints. It shall be the duty of the city manager to make investigations into the affairs of the city and any department or division thereof, and the performance of any contract or other obligation of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government, unless the council delegates the investigation to another entity.
- I. Signatures. The city manager shall have the same authority as the mayor to sign documents as specified in Section 40602 of the California Government Code, whenever such documents have been approved by the city council for execution. Additionally, the city manager shall have the authority to sign on behalf of the city, without council review, routine authorizations so long as the execution is for the purpose of implementing an existing city policy, regulation, or approval. Only the city manager and the mayor shall be authorized to approve agreements on behalf of the city unless execution by another officer is expressly required by state or federal law.

#### **2.06.040 Additional agreements.**

Nothing in this chapter shall be construed as a limitation on the power or authority of the city council to enter into any supplemental agreement with the city manager delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter.

### **2.06.050 Meetings.**

- A. Attendance. The city manager shall attend all meetings of the city council unless excused by the mayor or the city council, except when his/her employment, discipline or removal is under consideration by the city council. The city manager may attend any or all meetings of the planning commission, or any other commissions, boards or committees created by the council. While in attendance, she/he shall inform members of any matter being considered by the council within the jurisdiction of the body, and shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the council.
- B. Discussions. The city manager may take part in council discussions but may not vote. She/he shall have the power to appear and address the council or any of its boards or commissions at any meeting.
- C. Recommendations. The city manager, with the assistance of the city clerk, shall assemble the agenda packet for all regular, special and emergency city council meetings, and shall make reports or recommendations on agenda items for consideration as necessary or as requested by the city council.

### **2.06.060 Personnel.**

- A. Appointments. The city manager shall select qualified candidates to fill staff vacancies occurring within the city or to fill newly created positions.
- B. Dismissal. The city manager shall approve the dismissal or suspension of any city employee with appropriate documentation and after following the processes set forth in the city's personnel manual or any applicable collective bargaining agreement.
- C. Performance Evaluations. The city manager is responsible to see that all city staff receive an annual performance evaluation. Department heads will evaluate their staff, with the final approval of the city manager regarding step increases, pay raises, performance bonuses, etc. The city manager's performance will be evaluated by the city council annually prior to any Council decisions regarding pay increases, benefit augmentations, etc. The city manager is responsible to audit and assure that all evaluations are consistent with the respective job descriptions as well as with all applicable city policies and procedures, and to conduct independent evaluations as she/he deems necessary. All evaluations will be discussed with the respective employees prior to becoming part of the personnel record.
- D. General Supervision. The city manager shall be responsible for the overall supervision of all employees and for the day-to-day operations of the city.

### **2.06.070 Expenses.**

The city manager shall be reimbursed for all actual and necessary expenses incurred by him/her in the performance of his/her official duties, including those incurred when traveling on business

pertaining to the city, pursuant to the city's personnel policy manual. The council may require pre-authorization of expenses in certain circumstances.

### **2.06.080 Compensation.**

The salary and other benefits for the city manager shall be established by the council, agreed to by contract, and shall be reviewed immediately following the city manager's annual performance evaluation. Such salary and benefits are to be independent of any salary or benefits negotiated for the benefit of other city employees unless so stated in the city manager's contract.

### **2.06.090 Dismissal; Disability; Resignation; Exemption; Exception.**

The city manager may be dismissed by the city council, with or without cause at any time for any reason or no reason. Ordinarily the Council shall give the city manager 30 days prior written notice of his/her dismissal, but this requirement may be waived by the council upon the finding of extraordinary circumstances that require immediate dismissal. The removal of the city manager shall be made by either a four-fifths vote of council if the dismissal is without cause, or a majority vote of the whole council in the instance of a "for cause" dismissal.

- A. Removal For Cause. "For cause" is defined as any facts which the Council determines would constitute the basis for a serious disciplinary infraction. "For cause" includes, but is not limited to:
1. Fraud in securing employment;
  2. Incompetence;
  3. Inexcusable neglect of duty;
  4. Insubordination;
  5. Dishonesty;
  6. Being under the influence of alcohol or a controlled substance while on duty;
  7. Inexcusable absence without leave;
  8. Conviction of a felony or misdemeanor that is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of the city manager's position. A plea of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction with the meaning of this section;
  9. A finding of unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, sexual orientation, gender identity or age, against the public or other employees while acting in the capacity of city manager.
  10. Material breach of the employment agreement.

- B. Disability Termination. If the city manager shall, for whatever reason, become incapable of performing any of the essential functions of the position, even with reasonable accommodation by the city, either (1) permanently, or (2) for a period exceeding the period of leave available to the Employee under the Family Medical Leave Act or the California Family Rights Act (if qualifying), or accrued sick leave, whichever is longer, then Employee shall be deemed to have suffered a disability. As the city manager position requires him/her to devote a great deal of time both during and outside of normal office hours to the business of the city, the city manager acknowledges and agrees that granting a leave longer than the time period stated in this section shall constitute an undue hardship on the city. In accordance with applicable law, any request for leave that constitutes an undue hardship shall be grounds for “for cause” termination.
- C. Hearing. Within three days after the delivery to the city manager of a notice of dismissal for cause, the city manager may, by written notification to the city clerk, request a hearing before the city council regarding its reasons for dismissal. The city council shall schedule a meeting to discuss the dismissal with the city manager within fourteen days of receipt of the written notice. The city council is under no obligation to take a particular action or any action during or after the conclusion the hearing.
- D. Suspension Pending Hearing. After furnishing the city manager with written notice of an intended dismissal, the city council may suspend him/her from duty, but his/her compensation shall continue until the removal date set by the city council.
- E. Resignation. The city manager shall give the city council thirty days prior written notice of his/her resignation from the position.
- F. Exemption. The city manager is an exempt employee under the terms of the federal Fair Labor Standards Act, and shall not be represented by an association of, or an agent for, employees under his/her supervision, or any other employee association.
- G. Exception. The city council shall not terminate the city manager’s employment without cause within 90 days prior to or after a municipal election for city council seats, or an election for the recall of a sitting council member or members. If the employment contract renewal date falls within this 180-day period, this prohibition does not apply to non-renewal of the employment contract.

## Section 2

Section 2.08.010 of the Sutter Creek Municipal Code is amended as follows:

### **2.08.010 - Employee.**

The city clerk shall be an employee of the City of Sutter Creek and serve under the direction of the city manager.

## Section 3

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4

The City Council determines that the provisions of this Ordinance are exempt from the California Environmental Quality Act because the instant ordinance involves continuing administrative activities and thus is not a project, as the Act defines, pursuant to Section 15378(b)(2) of the California Environmental Quality Act Guidelines. To the extent the adoption of this Ordinance constitutes a project, the City Council finds pursuant to CEQA Guideline Section 15061(b)(3) that the project is exempt from environmental review because it can be seen with certainty that the adoption of the ordinance would not have any significant impact on the environment.

This ordinance shall be published and posted in the manner required by law by the City Clerk.

Introduced at a meeting of the City Council of Sutter Creek on November 6, 2023, and enacted by the City Council of the City of Sutter Creek at a regular meeting held on November 20, 2023.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Sutter Creek City Council, held on this 20th day of November 2023, by the following vote, to wit:

AYES: Feist, Riordan, Sierk, Swift and Gunselman

NAYS:

ABSENT:

ABSTAIN:

*Claire Gunselman*

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Claire Gunselman, Mayor

ATTEST:

*Karen Darrow*

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Karen Darrow, City Clerk