



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

Meeting Date: 9/6/2022

Agenda Item: 10E

Department: City Council

Prepared By: Interim City Manager Subcommittee

Click or tap here to enter text.

Subject:

APPOINTMENT OF SEAN JOYCE AS INTERIM CITY MANAGER

Fiscal Impact:

No; this position is currently fully funded.

Summary:

The City Council established a Council Subcommittee to recruit for an Interim City Manager. This interim role is vital to maintain a high level of service to the City residents and to provide leadership during this transition. Compensation and hours of service for this position are statutorily limited if held by a PERS retiree at the former City Manager's unbenefited salary (Grade 99, Step D, \$133.70).

Discussion:

The California Public Employees' Retirement System (CalPERS) law that went into effect in January 2013 requires a governing body's authorization for the agency to hire a CalPERS annuitant (i.e., retiree) into a vacant position on an interim basis. This type of appointment is permitted, as long as an agency is actively recruiting to fill the full-time position and the governing body deems that someone with specialized skills are needed during the interim appointment.

The San Clemente City Manager submitted a resignation letter to the City on August 12, 2022. On August 16, 2022, the City Council established a Council Subcommittee to seek an individual to serve as Interim City Manager. The Council subcommittee has received resumes and conducted interviews for the interim position, and initiated the process of retaining a recruitment firm to fill the vacancy.

The Council Subcommittee would like to extend an offer of appointment to the interim position to Sean Joyce. Mr. Joyce has more than 30 years of experience in local government, including City Manager roles in Sierra Madre, South Pasadena, and Irvine. In addition, Mr. Joyce has served as Interim City Manager for the cities of Huntington Beach and South Pasadena. He received a Master of Public Administration and Bachelor's degree in Political Science from CSU Fullerton.

Any proposed terms must be formalized as a discussion item on a public agenda such as the September 6, 2022 City Council meeting agenda. This item is presented as an opportunity for the Council to consider and approve terms to appoint Mr. Joyce. Mr. Joyce has indicated his willingness to accept this appointment on the terms contained in the attached agreement.

In order for the City to make this appointment and comply with the law, it is necessary to adopt the

proposed resolution and name Sean Joyce as the Interim City Manager.

Recommended Actions:

Interim City Manager Subcommittee Recommendation

1. Adopt Resolution No. 22-35 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE APPOINTMENT OF SEAN JOYCE AS INTERIM CITY MANAGER AND APPROVING AN EMPLOYMENT AGREEMENT IN CONNECTION THEREWITH.
2. Approve, and authorize the Mayor to execute, Contract C22-55, by and between the City of San Clemente and Sean Joyce, providing for Interim City Manager Services, at the rate of \$133.70/ hour.

Attachment:

Resolution
Agreement for City Manager Services

Notification:

None.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE
APPOINTMENT OF SEAN JOYCE AS INTERIM CITY
MANAGER AND APPROVING AN EMPLOYMENT
AGREEMENT IN CONNECTION THEREWITH

WHEREAS, Section 21221(h) of the California Public Employees' Retirement Law authorizes the City Council to approve an interim appointment to a vacant position when a recruitment is underway to fill a "permanent appointment" and specialized skills are required; and

WHEREAS, the City of San Clemente has in place an active recruitment for a permanent replacement to fill the vacant City Manager position, and an interim appointment is necessary in order for the City to effectively and efficiently plan, direct, manage, and oversee the activities and operations of the City including the Community Development, Public Works, Utilities, Recreation, and Finance and Administrative Services Departments; and to provide complex administrative support to the City Council and leadership during a period of transition; and

WHEREAS, Sean Joyce has many years of specialized, related experience as a City Manager and exceptional qualifications to fill this interim position.

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

Section 1. Sean Joyce is hereby appointed Interim City Manager of the City of San Clemente for a period of time not to exceed nine-hundred-sixty (960) hours, beginning September 7, 2022.

Section 2. The Employment Agreement with Sean Joyce for the position of Interim City Manager attached hereto as Exhibit "A" is hereby approved.

Section 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

CITY OF SAN CLEMENTE

AGREEMENT FOR INTERIM CITY MANAGER SERVICES

THIS AGREEMENT FOR INTERIM CITY MANAGER SERVICES (hereinafter referred to as "Agreement") is made and entered into as of the 7th day of September, 2022, by and between the CITY OF SAN CLEMENTE, a California general law city (hereinafter referred to as "City"), and SEAN JOYCE (hereinafter referred to as "Employee").

RECITALS

- A. Government Code section 21221(h) permits retired annuitants under the California Public Employees' Retirement System ("CalPERS") to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position.
- B. The position of City Manager is vacant and the City is currently conducting an open recruitment to permanently fill this vacant position.
- C. City desires to employ on an interim and at-will basis pursuant to California Government Code section 21221(h) the services of Employee and Employee desires to accept temporary employment as Interim City Manager of the City of San Clemente until such time as a permanent City Manager is appointed and commences employment or this employment is otherwise terminated.
- D. The Interim City Manager position is a position that requires specialized skills and expert professional or technical services. Employee is willing and fully qualified by virtue of his extensive experience in municipal management to perform these services for the City.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the parties agree as follows:

1. Duties. City hereby agrees to engage the services of Employee to serve as Interim City Manager to perform the functions and duties specified in Chapter 2.08 of the San Clemente Municipal Code and related City Policies, and to perform such other legally permissible and proper duties and functions as the City Council may from time-to-time assign or as may be necessary or desirable in the opinion of Employee for the efficient management of the City. Employee shall perform the services required under this Agreement during normal City operating hours, although the precise hours that Employee is in City Hall is left to his discretion; and further, Employee shall be available for attendance at City Council and other meetings during other hours as may be necessary.

2. Term.

(a) The term of this Agreement shall commence on September 7, 2022. It is understood and agreed that this Agreement is one of limited duration and shall continue until terminated as provided herein, and in no event for more than 960 hours, or the hiring of a new City Manager, whichever occurs first. If Employee determines that he is approaching the 960 hour limit, Employee shall notify the City Council in writing and shall arrange a reduced work schedule that will not exceed the 960 hour limit for the remaining period until such time as a new City Manager is hired.

(b) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to terminate this Agreement at any time upon submitting thirty (30) days written notice of termination to the City or the right of the City to terminate this Agreement, with or without cause, at any time.

3. Compensation. City agrees to pay Employee for services rendered pursuant hereto which amount is in conformance with the requirements of Government Code section 21221(h) compensation of \$133.70/hr. Employee is exempt from overtime under the Federal Fair Labor Standards Act.

4. Benefits. Employee is a retiree of the Public Employees' Retirement System and will thus, not be enrolled in CalPERS or have any CalPERS retirement contributions reduced from his salary or made on his behalf by the City. The parties understand that Employee may not work more than 960 hours within the fiscal year occurring during the term of this Agreement without impacting his retirement benefits and having to be enrolled in CalPERS as an active employee. For that reason, Employee will be required to keep accurate time records of his hours worked to ensure that he does not exceed 960 hours within the fiscal years that occur during the term of this Agreement. City will enroll Employee in CalPERS solely for administrative recordkeeping purposes (Employee will remain in retired status) and will report both hours and pay pursuant to this Agreement. Employee hereby waives all benefits provided to City employees, including retirement contribution, health/medical insurance, dental insurance, life and disability insurance, sick leave, vacation, paid holidays, unemployment insurance and similar benefits.

5. General Expenses. City recognizes that certain expenses of a non-personal and generally job affiliated nature may be incurred by Employee and hereby agrees to reimburse Employee said necessary and reasonable expenses as are submitted to the City based upon expense receipts, statements, or personal affidavits, and audit thereof in like manner as other demands against the City. Out-of-town travel for which expense reimbursement will be sought shall be subject to advance approval by the City Council.

6. Rules and Regulations. Employee is subject to the provisions of any personnel rules, regulations and other policies and procedures governing terms and conditions of employment whether now in existence or subsequently adopted by City. Such rules, regulations,

policies, or procedures are incorporated into this Agreement by reference and shall govern unless there is a conflict with this Agreement.

7. Vehicle Operation. Employee shall operate any vehicle used in connection with the performance of his duties as Interim City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

8. Conflict of Interest. Employee affirms and warrants that he has no financial, contractual, or other interest or obligation that conflicts with or is harmful to the performance of his obligations under this Agreement. Employee shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation.

9. Indemnification. Subject to, in accordance with, and to the extent permitted by the California Government Claims Act [Government Code section 810 *et seq.*], City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Employee's tenure as Interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as Interim City Manager. City shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including errors and omissions coverage on a "per occurrence" basis, in sufficient amounts to ensure fulfillment of this hold harmless and indemnification clause.

10. Abuse of Office; Reimbursement to City. Pursuant to Government Code section 53243, *et seq.* that became effective on January 1, 2012, if Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse such amounts paid; (2) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with Section 92 of the Penal Code.

11. Entire Agreement. This Agreement supersedes any, and all other agreements, written or oral, between the parties, and contains all the covenants and agreements between the parties. Each party acknowledges that no promises, representations, inducements, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party that are not embodied herein. No modification to this Agreement shall be effective unless reduced to writing and signed by both parties.

12. General Provisions.

- (a) The text herein shall constitute the entire agreement between the parties.
- (b) This Agreement shall be binding upon and inure to the benefit of the heirs-at law and executors of Employee.
- (c) This Agreement shall be effective as of September 7, 2022.
- (d) If any provision or any portion hereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable the remainder of this agreement or portion thereof shall be deemed severable and shall not be affected and shall remain in full force and effect.
- (e) The City is entering into this Agreement by virtue of the professional reputation, experience, and competence of Employee. Hence, the obligations of Employee under this Agreement shall not be assigned or subcontracted, nor shall the rights be delegated without prior written approval of the City Council.
- (f) The Employee shall comply with and adhere to all City policies, rules and regulations including but not limited to its policies regarding non-discrimination and sexual harassment.
- (g) The City makes no representation on the impact, if any; this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any, and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.
- (h) Employee expressly certifies and warrants to the City that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.
- (i) Employee certifies and warrants to the City that his anticipated work schedule will not cause his to exceed the 960 hours per fiscal year limit pursuant to Government Code section 21221(h), including work for any other CalPERS employer during the current fiscal year.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Employee has signed and executed this Agreement, as of the date first indicated above.

Executed September 7, 2022.

EMPLOYEE

Sean Joyce

CITY OF SAN CLEMENTE

By _____
Gene James, Mayor

ATTEST:

Joanne Baade, City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney