

Agenda Report

December 13, 2021

TO: City Council
FROM: Interim City Manager
SUBJECT: APPOINTMENT OF CALPERS RETIREES PURSUANT TO GOVERNMENT CODE SECTION 21221(h)

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a resolution appointing a CalPERS retiree as interim Chief of Police, effective on the day following the separation of Chief Perez, subject to the interim City Manager filling the position in accordance with the Pasadena City Charter.
2. Adopt a resolution appointing a CalPERS retiree as interim General Manager of the Pasadena Department of Water and Power ("PWP"), effective December 31, 2021, subject to the interim City Manager filling the position in accordance with the Pasadena City Charter.
3. Adopt a resolution appointing a CalPERS retiree as interim Human Resources Director, effective January 8, 2022, subject to the interim City Manager filling the position in accordance with the Pasadena City Charter; and
4. Find that the action proposed herein is not a "project" as defined in the California Environmental Quality Act (CEQA), Public Resources Code Section 21065 and Section 15378(b)(2) of the State CEQA Guidelines and, as such, is not subject to environmental review.

BACKGROUND:

The City is facing a series of vacancies in key positions during the coming weeks that will need to be filled promptly to ensure the continued smooth operation of City business. Specifically, Chief Perez has informed the City that he anticipates his last day at the City to be January 7, 2022, PWP General Manager Bawa will be separating from

City employment on December 30, 2021 and Human Resources Director Curtis' last day in the position will be January 7, 2022.

All of these positions are subject to appointment by the City Manager pursuant to Section 604(c) of the City Charter. Further, Section 411(b) of the City Charter prohibits the City Council from interfering with the administrative service under the City Manager, including not attempting to direct or influence subordinates, which necessarily means that the City Council may not have a role in hiring for any position that is subordinate to the City Manager. This includes the positions of Chief of Police, PWP General Manager, and Human Resources Director.

Cynthia Kurtz serves as the interim City Manager pending the recruitment and selection of a regular City Manager. As such, the appointment to these vacancies will be on an interim basis. A possible source for an interim appointment is a retiree who has the requisite experience to hit the ground running upon appointment. If the retiree is a CalPERS retiree, the appointment to any of these vacancies will be subject to the working after retirement rules, including Government Code section 21221(h).

A requirement of an appointment pursuant to Government Code section 21221(h) is that the appointment be approved by the City Council. This creates a conflict with the Pasadena City Charter.

The City Attorney's Office, in consultation with special counsel, reached out to CalPERS to discuss a solution to the above conflict.

The solution entails the City Council adopting a resolution appointing a CalPERS retiree to each of the aforementioned vacancies, thus satisfying this requirement of Government Code section 21221(h), subject to the interim City Manager filling the position in accordance with the Pasadena City Charter. If the interim City Manager does not fill the position with a CalPERS retiree, the resolution is void. If the City Manager fills the position with a CalPERS retiree, a further condition of this solution will be ratification of the interim City Manager's selection at a subsequent meeting of the City Council.

CalPERS has approved this approach.

Appointment of CalPERS Retirees

If the City Manager fills a vacancy with a CalPERS retiree, the appointment must comply with the working after retirement rules. Section 21221(h) allows the appointment of a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a regular appointment, and provides that such appointment will not subject the retiree to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours, inclusive of hours worked for other CalPERS employers during the same period, in a fiscal year, excluding hours worked pursuant to Executive Order N-25-20 to ensure adequate staffing during the state of

emergency declared as a result of the COVID-19 pandemic. This waiver continues in effect.

It is imperative for the City to have continuous leadership in the Chief of Police, PWP General Manager, and Human Resources Director positions in order to ensure proper management and operation of their respective City departments to address the challenges created by the COVID-19 pandemic. As such, all hours worked by any CalPERS retiree appointed to these positions are subject to the waiver of the 960 hour limit and will not count toward the 960-hour per fiscal year limit so long as the COVID-19 state of emergency remains in effect.

In order to comply with applicable requirements, active recruitment for a regular appointment to each of these positions must begin on or before the date that the CalPERS retiree begins the interim appointment. Further, active recruitment must continue throughout the interim appointment until a regular appointment is selected.

The rate of pay for a CalPERS retiree is dictated by law and governed by Government Code sections 21221(h) and 7522.56. Specifically, Section 7522.56(d) – which supersedes Section 21221(h) to the extent of conflicts – provides that “the rate of pay for the employment shall not be less than the minimum, not exceed the maximum, paid by the employer to other employees performing comparable duties, divided by 173.333 to equal an hourly rate.” Section 21221(h) further provides that this rate must be “listed on a publicly available pay schedule for the vacant position.” A CalPERS retiree may not receive any other compensation or benefits, unless required by federal or state law.

Chief of Police

Chief Perez is expected to end his tenure with the City on January 7, 2022. If a CalPERS retiree is selected by the interim City Manager to fill the vacancy, the key terms of the interim Chief of Police appointment include the following:

- The term of the employment will be from the day following Chief Perez’s last day of work, to the date immediately preceding the day on which the regular Chief of Police begins work, unless sooner terminated by the interim City Manager or the CalPERS retiree.
- Hourly rate will be no less than \$109.53 and no more than \$136.92.
- No other compensation or benefits, including leave, will be provided, unless required by state or federal law.
- Hours worked will not be limited while the COVID-19 waiver to the 960 hour limitation remains in effect.

PWP General Manager

Mr. Bawa is expected to end his tenure with the City on December 30, 2021. If a CalPERS retiree is selected by the interim City Manager to fill the vacancy, the key terms of the interim PWP General Manager appointment include the following:

- The term of the employment will be from December 31, 2021, to the date immediately preceding the day on which the regular PWP General Manager begins work, unless sooner terminated by the interim City Manager or the CalPERS retiree.
- Hourly rate will be no less than \$107.49 and no more than \$134.36.
- No other compensation or benefits, including leave, will be provided, unless required by state or federal law.
- Hours worked will not be limited while the COVID-19 waiver to the 960 hour limitation remains in effect.

Human Resources Director

Ms. Curtis is expected to end her tenure with the City on January 7, 2022. If a CalPERS retiree is selected by the interim City Manager to fill the vacancy, the key terms of the interim Human Resources Director appointment include the following:

- The term of the employment will be from January 8, 2022, to the date immediately preceding the day on which the regular Human Resources Director begins work, unless sooner terminated by the interim City Manager or the CalPERS retiree.
- Hourly rate will be no less than \$86.41 and no more than \$108.01.
- No other compensation or benefits, including leave, will be provided, unless required by state or federal law.
- Hours worked will not be limited while the COVID-19 waiver to the 960 hour limitation remains in effect.

ENVIRONMENTAL ANALYSIS:

The action proposed herein is not a "project" as defined in the California Environmental Quality Act (CEQA), Public Resources Code Section 21065 and Section 15378(b)(2) of the State CEQA Guidelines and, as such, is not subject to environmental review;

FISCAL IMPACT:

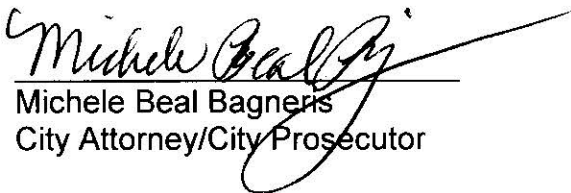
There is no fiscal impact as there are sufficient appropriations in each department's Fiscal Year 2022 operating budget to support this action.

Respectfully submitted,



Cynthia J. Kurtz
Interim City Manager

Concurrence:



Michele Beal Bagners
City Attorney/City Prosecutor

ATTACHMENTS:

Three (3) Resolutions of the City Council