

Agenda Report

October 25, 2021

TO: City Council
FROM: Mayor Victor Gordo
SUBJECT: **APPOINTMENT OF CYNTHIA KURTZ PURSUANT TO GOVERNMENT CODE SECTION 21224 (EXTRA HELP) AND GOVERNMENT CODE SECTION 21221(h) (INTERIM CITY MANAGER)**

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the common sense exemption that CEQA only applies to projects that may have an effect on the environment; and
2. Adopt a Resolution appointing Cynthia Kurtz as interim City Manager effective December 3, 2021 and authorizing Mayor to execute employment agreement; and
3. Authorize the Mayor to execute a limited term agreement with Cynthia Kurtz pursuant to Gov. Code section 21224.

BACKGROUND:

Following notification by Steve Mermell of his intention to retire as City Manager effective December 2, 2021, the City Council met on October 18, 2021 to discuss options to ensure that the City continues to be effectively managed without interruption while the City recruits for a permanent appointment to the City Manager position.

With the understanding that the recruitment process is anticipated to take several months, the City Council concluded that it would be in the City's best interest to appoint Cynthia Kurtz, former Pasadena City Manager, as interim City Manager and that she come on board ahead of Mr. Mermell's retirement to ensure a smooth transition to her role as interim City Manager. As such, the City Council directed staff to prepare the appropriate documentation to approve the aforementioned appointments at its regular meeting on October 25, 2021.

Ms. Kurtz is a CalPERS retiree and, as such, her appointments must comply with the working after retirement rules set forth in the Government Code and CalPERS regulations.

Interim City Manager Appointment

Government Code Section 21221(h) permits the City Council to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent 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. 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 will not count toward the 960 hour per fiscal year limit so long as the COVID-19 state of emergency remains in effect. That waiver currently remains in effect.

The City Manager position will not become vacant until December 3, 2021 and, as such, Ms. Kurtz's appointment as interim City Manager cannot be effective until such date. Further, it is imperative for the City to have continuous leadership in its chief executive position in order to ensure proper management and operation of the City to address the challenges created by the COVID-19 pandemic. As such, all hours worked by Ms. Kurtz in her role as Interim City Manager are subject to the waiver of the 960 hour limit and will not count toward the 960-hour per fiscal year limit as discussed above.

The rate of pay for an Interim City Manager who is retired from CalPERS 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, nor 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.”

The City Manager's salary is set by contract and is reflected as a fixed amount on the City's publicly available pay schedule, not a range. Thus, the hourly rate to be paid to Ms. Kurtz for her service as interim City Manager will be \$145.16. She will not receive any other compensation or benefits, unless required by federal or state law.

Section 21221(h) further requires that the appointment to a vacant position be made by the City Council. As such, this agenda item includes a resolution appointing Ms. Kurtz as interim City Manager effective December 3, 2021 and authorizes the Mayor to execute an employment agreement for interim City Manager services with Ms. Kurtz consistent with the requirements of Section 21221(h) and the terms set forth in the resolution.

The term of Ms. Kurtz appointment as interim City Manager will end when the permanent appointment to the City Manager position begins his or her employment with the City, unless the appointment is terminated earlier by the City or Ms. Kurtz.

Extra Help Appointment

Prior to assuming her role as interim City Manager effective December 3, 2021, Ms. Kurtz will work closely with Mr. Mermell from November 10, 2021 to December 2, 2021 to ensure a smooth transition in leadership. Since Ms. Kurtz will not be assuming a vacant position until Mr. Mermell retires, this appointment will be an extra-help appointment pursuant to Government Code Section 21224.

Key terms of this appointment include the following:

- Hours worked in this appointment will count against the 960 hour per fiscal year limitation as this appointment does not qualify for the COVID-19 waiver.
- Compensation must be limited to an hourly rate that is no less than nor more than the rate of pay paid by the City to other employees performing comparable duties, divided by 173.333 to equal an hourly rate. Given that she will be working closely with the City Manager, it has been determined that the comparable position is the Assistant City Manager position. As such, her hourly rate for this appointment will be \$120.00.
- No further compensation or benefits shall be provided, unless required by state or federal law.

A limited term agreement incorporating the foregoing terms and consistent with Section 21224 will be prepared and the Mayor shall be authorized to execute such agreement once it is finalized.

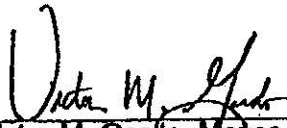
ENVIRONMENTAL ANALYSIS:

The action proposed herein is exempt from CEQA review pursuant to State CEQA Guidelines Section 15061(b)(3). The contracts are covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the provisions of CEQA. These contracts are for professional services only.

FISCAL IMPACT:

Ms. Kurtz will be paid an hourly rate of \$145.16 for her interim City Manager role effective December 3, 2021. During her appointment as an extra-help retired annuitant from November 10, 2021 through December 2, 2021, she will be paid an hourly rate of \$120.00, consistent with the pay rate for the Assistant City Manager position. She will not be entitled to any additional compensation, benefits, paid leave or paid holidays, unless required by federal or state law.

Respectfully submitted,



Victor M. Gordo, Mayor
City of Pasadena

ATTACHMENT: RESOLUTION