



CITY OF PACIFIC GROVE

AGENDA REPORT

300 Forest Avenue, Pacific Grove, California 93950

TO: Members of the City Council
FROM: Mayor Bill Kampe, Councilmember Rudy Fischer
MEETING DATE: April 20, 2016
SUBJECT: Approve Employment Agreement with Ben Harvey for role of City Manager.
CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Approve an employment agreement with Benjamin Harvey to serve as the Pacific Grove City Manager, and authorize the Mayor to sign such agreement on behalf of the City.

DISCUSSION

After the departure of former City Manager, Tom Frutchey, the City engaged the Executive Search firm of Ralph Andersen & Associates, represented by Mr. David Morgan, to perform the recruitment for a new City Manager. As a result of national outreach over 60 applications were received. Of those the City Council interviewed the top 5 applicants. This group was then narrowed to 3 candidates. The process for the top 3 finalists included detailed background and reference checks as well as a 2nd round of interviews by the City Council.

All 3 finalists were determined to be highly capable with excellent credentials, experience, and potential fit for the City of Pacific Grove. After careful deliberation including a review of relevant labor market data, a subcommittee of Mayor Kampe and Councilman Fisher was appointed to work with staff and the consultant to negotiate terms of employment with Benjamin Harvey. This proposed agreement (attached) is presented for public comment and Council consideration.

FISCAL IMPACT

Terms are fully described in the attached contract.

ATTACHMENTS

Proposed Employment Agreement with Ben Harvey

Respectfully submitted:

Bill Kampe

Bill Kampe, Mayor

Rudy Fischer

Rudy Fischer, Councilmember

**CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF PACIFIC GROVE
AND
BENJAMIN HARVEY**

This Employment Agreement (Agreement) replaces any prior Employment Agreement between the City of Pacific Grove and Benjamin Harvey (City Manager or Employee). This Agreement is entered into on April 20, 2016.

FINDINGS

1. City desires to employ Benjamin Harvey as City Manager of the City of Pacific Grove, as provided for in the Pacific Grove Charter and Municipal Code.
2. The City Council (Council), desires to provide certain benefits, to establish certain terms and conditions of employment, and to set working conditions of said Employee.
3. The City desires to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment; (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security; and (3) to provide a just means for terminating Employee's services at such time that City may desire to terminate his employment.
4. The City Council enters into this Agreement to set the terms and conditions of employment of Benjamin Harvey as City Manager. A prior interim employment agreement was entered into between the City of Pacific Grove and Employee. This Agreement supersedes that document.
5. The functions, duties and prerogatives of the City Manager are specified in Article 19 of the Pacific Grove City Charter and in Chapter 2.06 of the Pacific Grove Municipal Code. The provisions of the City Charter and Chapter 2.06 of the Municipal Code control should any conflict exist pertaining to this Agreement.
6. Benjamin Harvey intends and is required by this Agreement to well and faithfully perform the duties of City Manager of the City of Pacific Grove in accord with the Pacific Grove City Charter, the Pacific Grove Municipal Code, and Council policy, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

AGREEMENT

Section 1. Effective Date This Agreement shall be take full force and effect as of April 20, 2016.

Section 2. Modification of Earlier Agreement This Agreement shall supersede and replace any earlier Agreement between the City and Employee, the provisions of which shall not apply after the effective date of this Agreement.

Section 3. Powers, Duties, and Responsibilities of the City Manager

- A. The City shall employ Benjamin Harvey as City Manager for the City of Pacific Grove to perform the functions and duties specified in Article 19 of the Pacific Grove City Charter and by Chapter 2.06 of the Pacific Grove Municipal Code. The City Manager shall also perform other legally permissible and proper duties and functions as the Council shall from time to time assign.
- B. Benjamin Harvey agrees to well and faithfully perform the duties of City Manager of the City of Pacific Grove as specified in Paragraph B of this Section. He shall at all times endeavor to devote reasonable and necessary time both during and outside normal office hours to the business of the City. He shall maintain regular office hours at City Hall except when absent in the proper performance of his duties and responsibilities as City Manager, or when utilizing leave.

Section 4. Term

- A. The City Manager serves at the pleasure of the City Council. Nothing in this Agreement shall imply or suggest a guaranteed tenure.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Benjamin Harvey to resign at any time from his position as City Manager, subject only to the provisions set forth in Section 5, paragraphs C and D, of this Agreement.
- C. Benjamin Harvey agrees to remain in the exclusive employ of the City of Pacific Grove while employed by the City, and avoid any conflicting interests. Exclusive employment, however, shall not be construed to preclude occasional teaching, writing, speaking, or consulting performed on the Employee's time off, even if outside compensation is provided for such services. Such activities are expressly allowed, but in no case shall any activity be allowed which would present a conflict of interest with the City. Benjamin Harvey agrees to provide written notification of any outside activity within the meaning of this provision.
- D. This Agreement shall remain in place unless or until it is amended or terminated, by either Party, as provided by its terms.
- E. Nothing in this Agreement shall limit or otherwise interfere with the right of the City to terminate services of Benjamin Harvey in accordance with Section 5 (Termination and Severance) of this Agreement.

Section 5. Termination and Severance

- A. Employee may be terminated by the City at any time during the term of this Agreement in accord with the provisions of Article 19 of the City Charter, and applicable provisions of the Municipal Code.
- B. If at the time of termination, Benjamin Harvey is willing and able to perform duties under this Agreement, City shall pay Termination Pay to him as a lump sum cash payment equal to twelve (12) month's salary and benefits accrued to the date of termination, including without limitation (paid time off (PTO) (personal or flex time), and holidays. City shall pay COBRA health

benefits under Section 7 for the first six (6) month period or until Benjamin Harvey finds other comparable employment, whichever occurs first. However, in the event the City Manager is terminated due to his conviction of a felony or other illegal act involving moral turpitude or personal gain to him (such as fraud, embezzlement, misappropriation of funds, of theft) the City shall have no obligation to provide payment as stated in this Paragraph.

- C. In addition to any other action to terminate, for the purposes of this Agreement, termination shall also be deemed to have occurred at Benjamin Harvey's option:
 - (i) In the event City at any time during the term of this agreement reduces the salary or other financial benefits of the Employee in a greater percentage than an applicable across-the-board reduction for all employees of the City; or
 - (ii) In the event City refuses, following written notice, to comply with any other provision herein benefiting Employee.
- D. In the event Employee voluntarily resigns his position, Employee shall give City sixty (60) days prior written notice, unless the parties otherwise agree.
- E. Employee shall have the right to resign in lieu of termination, but by exercising this election the City shall have no obligation to provide any payment required by Paragraph B of this Section 5.
- F. In the event Employee retires, Employee shall give City six (6) months prior written notice, unless the parties otherwise agree.
- G. In addition to any other reason, City may terminate this agreement as a retirement in the event Employee becomes permanently incapable of performing the duties of City Manager for medical or other reasons.
- H. When this agreement expires or terminates, Employee shall return to City and City equipment and/or records which Employee used or received from City to perform services under this Agreement.
- I. If the City provides (i) paid leave or salary to Employee pending an investigation, and/or (ii) provides funds related to the legal criminal defense of Employee, and/or (iii) provides Termination Pay to Employee in accord with Paragraph B of this Section 5, then in the event the Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4, all sums paid by the City to Employee or for Employee's benefit shall be fully reimbursed to the City by Employee.

Section 6. Salary and Compensation

City agrees to pay Employee, for service as City Manager, a salary of one hundred sixty thousand dollars (\$160,000) per year. Payments shall be made in installments in the same manner upon which other City employees are paid. Compensation shall be periodically reviewed as provided in Section 9 of this Agreement.

Section 7. Benefits

City shall provide benefits to Employee as specified for City management employees by the Municipal Code, ordinance, resolution, or Memo of Understanding (MOU) except as otherwise provided below.

- A. Employee shall accrue PTO at the rate of 10 hours per month (one hundred twenty (120) hours annually). Upon employment, Employee's initial PTO balance, however, shall begin at one hundred (100) hours. A PTO accrual cap of four hundred and eighty (480) hours shall apply, and the Employee shall not accrue PTO when the Employee's unused accrual balance reaches that limit. Any accrued but unused balance at or below the accrual cap shall be paid upon separation or retirement.
- B. All tenure related benefits shall be calculated using a January 1, 2016 date of hire.
- C. City shall pay to Employee an automobile allowance of five hundred dollars (\$500) per month. This automobile allowance is intended to reimburse Employee for local travel, defined as travel within Monterey County or within fifty (50) miles of the City. All travel outside of local travel shall be paid at the same rate as to other City employees.
- D. City agrees to pay Employee a housing/transportation reimbursement in the sum not to exceed three thousand dollars (\$3,000) per month.
- E. Employee shall observe the following six holidays: Memorial Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas Day, New Year's Day. These six holidays shall be taken in the same manner as the City management employees. In addition, on July 1 each year Employee shall accrue five (5) floating personal days off to be used at his option. Any floating personal day off that is not used on or before June 30 shall be forfeited.
- F. Employee will be a PEPRA employee and shall receive and make contributions to CalPERS retirement as specified for PEPRA non-safety City Management employees and in compliance with PEPRA requirements.
- G. City shall pay Employee a one-time relocation benefit of five thousand (\$5,000) dollars to defray a portion of Employee's expenses. Should Employee voluntarily resign within twenty-four months of his initial date of hire, he shall rebate one-half of this sum to the City.
- H. City shall provide Employee with the following benefits:
 - i. Health, dental and vision benefits shall be provided in the same manner as the City provides for non-safety management employees. The City will pay one thousand dollars (\$1,000) per month for this benefit.
 - ii. City shall provide term life insurance for the benefit of Employee, with a payable death benefit of fifty thousand (\$50,000).

Section 8. Expenses

- A. City agrees to pay for City-related expenses incurred by Employee in accordance with City policy. City shall pay for unlimited text and voice cell phone service. Employee may also use a City paid cell phone, laptop and/or tablet for personal use.
- B. City agrees to budget for and pay reasonable professional dues, subscriptions to professional publications, and travel and subsistence expenses of the Employee for professional participation and travel, meetings, and occasions adequate to continue professional development. Employee participation shall include, but not be limited to the International City/County Management Association, League of California Cities, Local Government Managers Association, and such other national, state, regional, and local government groups and committees for which Employee serves as a member or for which participation is beneficial to the City. Expenditures shall be allowed only within the established budget for these purposes.

Section 9. Other Terms and Conditions of Employment

The City Council shall review and evaluate Employee's performance no later than March 31, 2017 and each year thereafter. Objective performance standards shall be discussed and set. City Council agrees to review base salary and/or other benefits of the Employee at the time of this annual review, taking into account factors such as Employee's performance and available City budget.

Section 10. Indemnification

- A. City shall indemnify, defend and save harmless Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance or Employee's duties as City Manager. Should the City compromise and settle any such claim or suit, it shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment and expiration of this Agreement, and shall provide full and complete protection to Employee by the City for any acts undertaken or committed in Employee's capacity as City Manager. Employee shall provide prompt written notice of filing of any claim or suit, and shall fully cooperate with City in the defense of any such action.
- B. The provisions of Section 5, however, shall prevail over this Section 10 if any conflict should arise.

Section 11. Conflict of Interest Prohibition

It is understood and agreed that because of the duties of the City Manager within and on behalf of the City of Pacific Grove and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business

venture conducting business in the corporate limits of the City of Pacific Grove, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Pacific Grove, without the prior written consent of the Council.

Section 12. General Provisions

- A. The text herein shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between City and Employee as of the effective date of this Agreement. City and Employee agree that each has fully participated in the review and revision of this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment of this Agreement.
- B. This Agreement may be amended or modified only by an instrument in writing signed by the Mayor and the Employee. The Mayor shall sign the amendment or modification only in accord with prior authorization received from the City Council.
- C. This agreement shall be binding upon and inure to the benefit of the heirs at law and executor of the Employee.
- D. Any waiver of the terms or conditions of this Agreement must be in writing and signed by the City and the Employee. A waiver of any term or condition of this Agreement shall not be construed as a waiver of any other term or condition of this Agreement.
- E. This Agreement, and any amendment, shall take effect only upon adoption and approval by the Council, taken in open session.
- F. In performing this Agreement, the parties shall comply with all applicable federal, state, and local laws and regulations.
- G. If any provisions, or any portion thereof, contained in this agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS THEREOF, the City of Pacific Grove has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, in duplicate, on this 20th day of April, 2016.

CITY OF PACIFIC GROVE, a Municipal
Corporation of the State of California

By: _____

Bill Kampe, Mayor of the City

ATTEST: _____

City Clerk

AGREED: _____

Benjamin Harvey

Approved as to form: _____

City Attorney

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