



# TOWN OF FAIRFAX

## COUNCILMEMBER MEMORANDUM

### December 4, 2019

**TO:** Mayor and Town Council

**FROM:** Mayor Coler  
Vice-Mayor Goddard

**SUBJECT:** Approval of amended and restated employment agreement with the Town Manager

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#### RECOMMENDATION

Approve the amended and restated employment agreement with Garrett Toy, Town Manager.

#### BACKGROUND

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated the following: "The Town of Fairfax will, consistent with the example of adopting ordinances after an initial and second reading, place final tentative employee agreements on two successive Town Council agendas - the first for discussion of the agreement, the second for Council vote (R2.5). We will begin implementation commencing in Fiscal Year 2016/2017."

While employment agreements with the Police Chief and Town Manager aren't agreements with bargaining groups (i.e., MOU's), in the spirit of labor agreement transparency, we are following the process to place the agreements on the agenda for two consecutive Council meetings. We placed this item on the consent calendar as a "notice." Tonight, the agreement is on the agenda for the Council's approval.

#### DISCUSSION

The Town Council conducts annual performance reviews of the Town Manager. The Council last approved a contractual increase, beyond what the other management employees receive, for the Town Manager in January 2017. In FY17-18 and FY18-19, the Town Manager received the same COLA's as other management employees. As per policy, the Council assigns a Council subcommittee to negotiate any compensation with the Town Manager. The Council subcommittee consists of Mayor Coler and Vice Mayor Goddard.

Based on the Town Manager's recent positive performance review and the Council's desire (and commitment) to retain highly qualified staff with the experience, skill set, background and knowledge that we have with our current Town Manager, we are recommending an increase to his current compensation to encourage him to remain with the Town and not seek other employment opportunities.

An increase is not unreasonable as Garrett also serves as the Town's Public Works Director and Human Resources Manager without receiving additional compensation for these responsibilities. An approximate salary range (not including benefits) for a PW Director is \$114,000 - \$132,000 annually (Fairfax range; other Marin cities are much higher). It should be noted that the Town contracts out for Town Engineer and additional public works expertise at a total of approximately \$50,000-\$80,000 per year (note: a portion of which is reimbursed by applicant fees and grants). In his capacity as Public Works Director, Garrett has secured millions of dollars in grant funding for all the bridge projects and numerous capital projects, including several street improvements, Bike Spine Completion Project-Class I Bike Lane, FEMA reimbursement for staff and projects costs for several projects, Federal

Highway Administration grant for the Forrest Avenue road repair (the 1<sup>st</sup> that had been sought/obtained), and the Pavilion Seismic Retrofit project. .

There are also some recent and upcoming opportunities for Town Manager recruitments in Marin and the Bay Area (e.g., Mill Valley, Pinole, Richmond, Brentwood; all with significantly higher annual compensation). The average yearly salary for all Town/City Managers in Marin is approximately \$218,000; the top of the range is significantly higher. Fairfax is currently at \$199,950. Note that these figures do not include additional compensation provided to Managers and does not reflect pending increases for other Town/City Managers.

The Town has a number of significant projects in process (e.g., CIP bridges projects, the Pavilion project, FEMA, street improvements) that would be impacted should it be necessary to recruit a new Town Manager. Along with experiencing significant delays in moving forward on many critical as well as day-to-day projects, recruitment costs would range from \$25,000 to \$30,000. In addition, Garrett has a Master's Degree in Public Policy from U.C. Berkeley and 25 years of experience (with 13 years as a department head) in the public sector *prior* to coming to Fairfax. To recruit an individual with the equivalent background and experience (in addition to our preference that the Manager live in Marin County) would likely require an increase in the current Town Manager's salary.

Given Garrett's performance, his unique ability to create a team environment for staff and his demonstrated willingness to work openly with the community on issues, coupled with his ability to take on and address new challenges, we recommend the following compensation adjustments:

- 1) Effective December 1, 2019 (subject to Council approval in December), the Manager's annual monthly salary will increase from \$16,663 to \$17,421/month. This is comprised of a 2% base salary increase coupled with a 2.5% education incentive for a Master's degree. This is an equivalent to a 4.5% COLA increase. The educational incentive is similar to the incentive police officers receive.
- 2) Provide a 3.5% contribution to a deferred compensation 457 account which requires the employee to provide a 1% match.
- 3) Increase vacation hours by 20 hours per year.

Even with the salary adjustment, the Town Manager would remain one of the lowest paid Town/City Managers in Marin. On a total compensation basis, not including other benefit/medical/retirement costs, the Town Manager would remain one of the lowest, if not the lowest, compensated Town/City Manager in Marin.

To clarify, we do not contemplate or recommend similar/parallel adjustments or increases to the salaries or compensation of other Town staff. In addition, please note that upon the need to fill a Town Manager position in the distant future, we anticipate that the recruitment salary would be lower based on the experience and qualifications of candidates.

The revisions have been incorporated into an amended and restated agreement to eliminate the need to track amendments to the original contract.

### **FISCAL IMPACT**

The increases would be absorbed within the Adopted FY19-20 budget. During the mid-year Budget review, we anticipate that projected expenditure savings should be able to offset this added cost.

### **ATTACHMENT**

Amended and Restated Employment Agreement.

## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is effective as of \_\_\_\_\_ and replaces the Amended and Restated Employment Agreement dated January 18, 2017, by and between the **Town of Fairfax** (the "Town") and **Garrett Toy** ("Employee").

### RECITALS

- A. The Town desires to employ Employee as its Town Manager in order to retain Employee's experience, skills, abilities, background and knowledge, and is willing to engage Employee on the terms set forth below.
- B. Employee desires to work in the employ of the Town as its Town Manager and is willing to do so on the terms set forth below.

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND OF THE MUTUAL PROMISES AND CONDITIONS OF THIS AGREEMENT, IT IS AGREED AS FOLLOWS:**

1. **Employment.** On the terms and conditions contained in this Agreement, the Town employs Employee as its Town Manager, and Employee accepts that employment.
2. **Term.** This Agreement shall remain in full force and effect from January 11, 2013, at 12:01 a.m., until terminated by the Employer or Employee, as provided for in Section 7 of this Agreement.
3. **Duties.** Employee shall perform all duties of the Town Manager described in Chapter 2.08 of the Town's Municipal Code and such other duties as may, from time to time, be established by the Town. Employee agrees that he will, to the best of his ability and experience, at all times loyally and conscientiously perform all the duties and obligations required of him by the terms of this Agreement. Employee will devote his full time to his duties and agrees that his employment with the Town will be his sole employment, unless otherwise agreed to in advance by the Town and Employee. However, Employee may engage in charitable endeavors not involving employment or activities related to the business of the Town, so long as such outside activities do not interfere with Employee's duties under this Agreement.
4. **Compensation and Benefits.** Employee shall receive for Employee's services to the Town the following compensation and benefits:
  - 4.1 **Base Salary.** Effective December 1, 2019, Employee shall receive a base salary of Two Hundred Three Thousand, Nine Hundred Ninety-Five Dollars (\$ 203,955) per year payable at the same time and in the same manner as other employees of the Town. The Town's publicly available salary schedule is hereby amended accordingly.
  - 4.2 **Additional Compensation.** The Town may, at its sole discretion, decide to award Employee additional compensation in the future on such terms as it deems appropriate.
  - 4.3 **Standard Management Employee Benefits.** Employee shall receive all benefits provided to the Town's management personnel, including any cost of living adjustments granted to Town management personnel, except that no additional COLA shall apply for the FY20/21. fiscal year. Employee shall accrue vacation leave on a basis as specified for the Town's management employees. However, in recognition of the additional hours required to fulfill the duties of Town Manager, Employee shall receive an additional 20 hours per year in vacation hours above the normal accrual rate for management employees.
  - 4.4 **Administrative Leave.** In recognition of the additional hours required to fulfill the duties of Town Manager, including attendance at numerous meetings outside normal working hours, Employee shall receive twenty (20) days of administrative leave per fiscal year.

Employee shall be allowed to cash out up to ten (10) days of administrative leave each fiscal year. This administrative leave may be carried over to subsequent fiscal years, but may not be cashed out upon separation from the Town.

- 4.5 **Automobile Allowance.** Employee shall receive \$300 each month for use of his private automobile on official Town business.
  - 4.6 **Life Insurance.** Employee shall be insured with a life insurance policy selected and paid for by the Town with a face value of One Hundred Fifty Thousand Dollars (\$150,000). Employee shall for all purposes be deemed the owner of the policy.
  - 4.7 **Professional Development.** The Town shall pay on Employee's behalf all annual International City County Management Association ("ICMA") dues and expenses related to attendance at the ICMA annual conference. The Town shall also pay on employee's behalf all expenses associated with attendance by Employee at one League of California Cities conference per year.
  - 4.8 **Retirement.** The Town shall fund 100% of the Employer's contribution to the Public Employees Retirement System ("PERS"). The Employee shall fund 100% of the Employee's contribution to PERS.
  - 4.9 **Deferred Compensation.** The Town shall contribute 3.5% of the Employee's base salary plus any educational incentives to a deferred compensation account. The Employee is required to provide a 1% match to receive the 3.5% contribution.
  - 5.0 **Educational Incentive.** In recognition of Employee's higher education, the Employee shall be eligible to receive a 2.5% increase in base pay for a Master's degree.
5. **Performance Reviews.** Employee's first employee performance review shall be completed on or about six months after the first day of employment, at which time the Employee's salary and severance will also be reviewed. Subsequent performance reviews shall occur on an annual basis, commencing in the month of December. The review of the performance of the Employee shall be subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The evaluations shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law. The Employee's salary and benefit package shall also be reviewed on an annual basis concurrent with the performance review.
  6. **At-Will Employment.** Employee's employment is employment at-will. Employment at-will may be terminated with or without cause and with notice as provided for in Section 9.1 of this Agreement at any time by the Town or Employee. Nothing in this Agreement shall limit the right of the Town or Employee to terminate employment at-will.
  7. **Termination of Employment.**
    - 7.1 **Termination by Town.**
      - (a) **Termination for Cause.** Without limiting the at-will status of Employee's employment, the Town may at any time terminate Employee's employment for cause.

"Cause" shall mean any of the following:

        - (i) Conviction of a felony;
        - (ii) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
        - (iii) Willful abandonment of duties;

(iv) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Town Council made by the Town Council as a body or persistent and willful violation of properly established rules and procedures; and

(v) Employee takes an action or knowingly fails to act on a matter, which materially and substantially impedes or disrupts the performance of the Town, or is substantially detrimental to employee safety or public safety.

If the Town terminates Employee's employment for cause, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee's last day of employment.

(b) **Termination without Cause.** If the Town terminates Employee's employment for any reason other than for Cause per Section 7.1(a), the Town's obligations under this Agreement to provide compensation and benefits to Employee shall continue for a period of six (6) months following the Employee's last day of employment. Employee shall continue to be bound by the provisions of Section 8 of this Agreement.

(c) **Government Code Compliance.** Any other term of this Agreement notwithstanding, the maximum compensation and benefits that Employee may receive under this Agreement as a result of termination shall not exceed the limitations provided in Government Code §§53260 – 53264. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the Town for any paid leave or cash settlement (including severance), as provided by Government Code §§53243 – 53243.4

7.2 **Termination by Employee.** Without limiting the at-will status of Employee's employment, Employee may resign from employment upon thirty (30) days prior written notice to the Town. If Employee so resigns, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee's last day of employment.

8. **Confidentiality.** During the course of employment or at any other time, Employee agrees not to disclose, communicate, use to the detriment of the Town or for the benefit of any other person (including Employee), or misuse in any way, any confidential information or data concerning the Town. Employee acknowledges and agrees that all such confidential information received by Employee will be received in confidence and as a fiduciary of the Town

9. **Miscellaneous.**

9.1 **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date of delivery if delivered personally or by overnight courier, or three (3) days after mailing if mailed by registered or certified mail, postage prepaid, and return receipt requested.

9.2 **Modifications.** All modifications to this Agreement shall be in writing and signed by both parties.

9.3 **Survival of Obligations.** The provisions of Paragraphs 7.1(b) and 8 shall survive the expiration or termination of this Agreement or any part hereof.

Notwithstanding the provisions of this Paragraph, the provisions of Paragraph 4.6 shall survive only should Employee assume payment of all premiums for the

aforementioned life insurance policy upon expiration or termination of this Agreement subject to the provisions of paragraph 7.1(b).

Town of Fairfax:

Employee:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Garrett Toy

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Town Clerk

Date: \_\_\_\_\_