



TOWN OF FAIRFAX

STAFF REPORT

July 7, 2021

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Ratification of appointment of Police Chief and approval of employment agreement for the Police Chief

RECOMMENDATION

- 1) Ratify appointment of Interim Police Chief Rico Tabaranza to the permanent Police Chief position
- 2) Approve employment agreement with Chief Tabaranza

BACKGROUND

At its March 17th meeting, the Council decided to conduct an internal recruitment process for Police Chief. The process entails interviewing the interim Police Chief Rico Tabaranza. As part of the interview process, the Council requested staff to form a community panel with seven (7) members: one Volunteer Board member, one Racial Equity and Social Justice Committee (RESJ) member, one Police Practices and Public Safety Alternatives (PPPSA) subcommittee member, one Chamber representative, one business representative, and two (2) at-large members.

The Council also requested staff conduct a community questionnaire survey to: a) ask for comments regarding qualities in a police chief, b) allow for the submittal of questions for the interim Police Chief, and c) allow for comments regarding rethinking and reimagining Police services for the PPPSA to discuss and consider. Staff developed a list of questions for the Community Panel based on the questions submitted in response to the questionnaire.

On April 21st, the Council appointed the members of the Community Panel. On May 26th, the Community Panel interviewed Interim Chief Tabaranza and, after the interview, provided its feedback to the Council subcommittee, Councilmembers Coler and Cutrano, assigned to this task. The entire Council interviewed the Interim Chief on June 1st and provided its feedback to the Town Manager.

DISCUSSION

Per Town Code, the Town Manager's appointment of the Police Chief requires ratification by the Council. I am pleased to recommend the appointment of Interim Chief Tabaranza to the Police Chief position. As the Interim Chief, Mr. Tabaranza has demonstrated the knowledge, ability, and capacity to manage and lead the department as Police Chief for the coming years. He has 10 years of law enforcement experience, all in Fairfax, a BS in Criminal Justice from Sacramento State, and a MPA from USF.

Similar to the retired Chief Morin, Mr. Tabaranza has requested an employment agreement with the Town. Effective July 1, 2021

- Base salary- \$13,771.77 per month (annual salary \$165,261). In December 2022, the Chief would receive a 3% COLA, subject to a satisfactory performance review. The base salary is lower than Chief Morin's final base salary.
- Longevity pay- 5% of base salary, same provisions as the Fairfax Police Officers Association (FPOA) MOU; this pay increases based on years of service. This is a reduction from Chief Morin's agreement as Chief Morin received 10% of base salary.
- Educational Incentives- same as the FPOA MOU plus an additional 2.5% for a POST management certificate. Chief Tabaranza currently receives the maximum incentive of 13.5% of base salary, which is the same rate that Chief Morin received.
- Reversion Rights/Severance Pay- If Chief Tabaranza is terminated without cause, he can elect to revert back to his previous position as a Lieutenant or elect a severance of 6 months of his base salary. The reversion provision is the same as Chief Morin's.
- Retirement- Chief pays 100% of the employee's share and 3% of the employer's share for a total of 12%; same as Chief Morin
- Shift Pay- \$100 per shift as Watch Commander. This is entirely dependent on staffing levels and saves the Town overtime costs for bringing in another officer in to serve as Watch Commander; same as Chief Morin
- Administrative Leave- 10 days, same as Chief Morin
- Vacation- same accrual rate as FPOA
- Holiday Pay- 11 days, same as FPOA
- Medical and Health benefits- same as FPOA

The total annual salary cost plus applicable incentives is approximately \$206,300. As the interim chief, Mr. Tabaranza earned an annualized compensation of approximately \$202,700. The compensation for Interim Chief reflected a 15% increase above his Lieutenant salary. The compensation for the permanent Police Chief is approximately \$3,600 or 1.8% more per year than he earned as the Interim Police Chief.

FISCAL IMPACT

The annual salary compensation is approximately \$206,300.

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (“Agreement”) is effective as of July 1, 2021, by and between the Town of Fairfax (the “Town”) and Rico Tabaranza, (“Employee”)

RECITALS

- A. The Town desires to employ Employee as its Police Chief, in the operation of the Police Department, in order to retain his 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 Police Chief and is willing to do so on the terms set forth below.
- C. Employee was appointed Police Chief on July 1, 2021 with such appointment ratified by the Town Council on July 7, 2021.

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

Employment: On the terms and conditions contained in this Agreement, the Town offers to employ Employee as its Police Chief, and Employee accepts that employment. Employee shall be subject to the supervision and oversight of the Town Manager. Employee is expected to devote his full professional energies to the position of Police Chief, and shall not engage in secondary employment, teaching, or consulting without the express and advance written authorization of the Town Manager. Further, Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

At Will Employment. The Police Chief will serve at the pleasure of the Town and may be terminated with or without cause by the Town Manager with ratification by the Town Council subject to the reversion rights specified below. Employee has no constitutionally recognized property rights in employment under this Agreement. Subject to, and in accordance with, both the Peace Officers Procedural Bill of Rights, and the Town’s personnel ordinances and regulations, removal of Police Chief shall require ratification by the Town Council per Town Municipal Code Section 2,12,070 (B)(3)

Term: This agreement shall remain in full force and effect from July 1, 2021, at 12:01 A.M, until terminated by the Employer or Employee.

Duties: The duties of the Police Chief are as set forth in the job description attached as Exhibit A, in addition to those specified by state law and those the Town Manager may from time-to-time assign. In particular, the operational control of the police department for the Town shall be the responsibility of the Police Chief. The Police Chief shall be responsible for the planning, organizing, and coordination of police operations. The duties of the Police Chief shall include but not be limited to the following:

- Supervision of the daily operations of the police department.
- Supervision of all department personnel.
- Preparation and submission of the police department budget.
- Submission of reports to the Town either orally or in writing when requested or required in order to ensure the proper communication between the Town and the police department.
- Being responsible for all departmental expenditures, as well as the receipt of funds and property in the custody of the police department.
- Supervision and control of all equipment and motor vehicles belonging to or used by the police department.
- Establishing weapons, ammunition, uniforms, equipment and vehicle specifications for the police department.
- Being in charge of all special, auxiliary and/or reserve police officers.
- Supervision and control of all training programs for department personnel and the assignment of personnel to such programs.

Standard Police Employee Benefits: Unless otherwise specified herein, the Chief of Police shall be entitled to all of the employee health and welfare benefits provided in the current/existing Memorandum of Understanding and side letters between the Town of Fairfax and the Fairfax Police Officers Association (FPOA), Which is attached hereto and incorporated as Exhibit B.

Base Salary: The Police Chief shall receive the sum of \$13,771.77 per month base salary. Effective January 1, 2023, the base salary will be \$14,184.92. The TOWN agrees that it shall not at any time during this contract reduce the salary, compensation, or other benefits except to the extent that such reduction is negotiated with the Police Chief.

The Police Chief is an exempt employee and therefore not eligible for overtime pay.

Longevity Pay: The Police Chief, having served 10 years with the Town of Fairfax, shall receive Longevity Pay in the amount of 5% base pay. This amount will increase to 7.5% at 15 years of service and 10% at 20 years of service with the Town of Fairfax.

Professional Achievement/Certificate Pay: The Police Chief shall, in addition to the amount of incentive pay outlined in the Police Officer Association MOU for possession of a Supervisory Certificate, receive an additional 2.5% for possession of a POST Management Certificate.

Performance Reviews: The Police Chief's employee performance reviews shall occur on or about July 1 of each year, at which time the Police Chief salary and benefits will also be reviewed.

The review of the performance of the Police Chief shall be subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Police Chief.

Reversion Rights / Conditional Severance Pay:

If the Town Manager with ratification from the Town Council per Town Code, elects to terminate the Police Chief from his position without cause, the Police Chief would then have the right to

revert to the position which he was promoted from, Lieutenant of Police, his permanent rank whether or not an opening for this position exists within staffing levels. The Police Chief would also have the right to elect severance pay instead of reverting back to his permanent position. In that event, The Town agrees to pay the Police Chief a lump sum cash payment in an amount equal to six (6) months' salary compensation at Employee's then-current monthly salary. Eligibility for such severance payment is expressly conditioned upon Employee's execution (and non-revocation) of (i) a waiver and release of any and all of Employee's claims against Town and its officers, elected official and employees to the full extent permitted by law, and (ii) a covenant not to sue, in a severance agreement with terms drafted by or agreeable to the Town. However, in the event the Employee is terminated for cause (as defined in Government Code §19572), Employee shall be entitled to only the compensation earned and accrued to the date of termination, and to such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits if terminated for cause.

Hours of Work: The Police Chief agrees to devote that amount of time and energy which is reasonably necessary for him to faithfully perform his duties as Police Chief under this employment agreement.

It is recognized that the Police Chief must devote a great deal of time and effort outside normal office hours to the business of the Town. Accordingly, the Police Chief will be allowed to take reasonable amounts of time off and be allowed to have flexibility in scheduling his time as he shall deem appropriate during normal office hours, and at such times as the Police Chief determines will least adversely impact the Police Department.

It is also recognized that flexible scheduling is essential in order to properly supervise and meet with supervisors and employees of the department who do not work normal business hours. The Police Chief is expected to schedule some of his hours to coincide and work with these employees. In addition, when a shift supervisor is absent due to vacancy, long term absence or occasional vacation coverage, the Police Chief may fill in as the shift watch commander when needed for coverage. For any such shift that the Police Chief works as the Watch Commander, he will be compensated at the rate of \$100 for each Watch Commander shift worked.

Administrative Leave: In recognition of the long hours required to accomplish the requirements of the job, including attendance at numerous meetings outside normal working hours, the Police Chief shall receive ten (10) administrative leave days per fiscal year. Ten administrative leave days shall be credited to the Police Chief upon execution of this agreement. The Police Chief may carry over up to 30 days of administrative leave each fiscal year.

Vacation Leave: The Police Chief, at his option, may convert to cash, 100hrs of accrued vacation time each fiscal year. The maximum amount of unused vacation hours is capped at 400hrs without prior approval of the Town Manager, in writing, to temporarily exceed that amount.

Holidays: The Police Chief shall receive eleven (11) paid holidays at 10 hours per holiday for a total of 110 hours per year.

- January 1, New Year's Day
- 3rd Monday in January, Martin Luther King Jr. Holiday
- 3rd Monday in February, President's Day

- Last Monday in May, Memorial Day
- July 4, Independence Day
- 1st Monday in September, Labor Day
- September 9th, Admission Day
- November 11, Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- December 25, Christmas Day

The Police Chief will be paid by separate check for all authorized holidays, along with uniform pay, on the last paychecks of May and November of each year as other personnel. Payment will be made at the Police Chief's regular rate of pay at the time payment is made. Holiday pay is paid in arrears.

Prior Unused Leave "Compensation Balance": All previously accrued and unused compensatory leave as of the signing date of this agreement shall be grandfathered and remain available for use by the Police Chief.

Compensation for Temporary Assignment:

In the event the Police Chief serves as "Acting Town Manager" for a period longer than 15 consecutive days, he shall receive an additional 5% of base pay for the time worked in the higher classification beginning on the 16th day when approved by the Town Manager or Town Council.

Education Leave: In order to promote continued development of skills, knowledge, and abilities among the management of the Town, the Town Manager may grant time off to the Police Chief for education leave. Such leave may be received in order to attend professional, technical or managerial workshops, courses, conferences, conventions, seminars, or related activities. The costs for attendance at these activities including travel, per diem, registration, tuition, material or other reasonable costs are legitimate Town expenses.

The Town recognizes that certain expenses, dues, subscriptions, travel and subsistence expenses are reasonably incurred by the Police Chief, without the need for the prior approval of the Town Manager but subject to all applicable Town reimbursement requirements, in the performance of the duties of his position. Examples of such duties and activities include attendance at civic/community functions, meetings and professional development and professional conferences, such as the California Peace Officers Association, Federal Bureau of Investigation National Academy Associates, International Association of Chiefs of Police, Executive Leadership Classes and Peace Officers Standards and Training Executive Courses.

The Town agrees to budget for and to pay for the reasonable costs for the necessary and desirable continued professional growth and advancement of the Police Chief's skills, knowledge and abilities. Expenses may also be reimbursed or directly paid on behalf of the Police Chief for courses, institutes and seminars that are necessary, in the discretion of the Town Manager, for the professional development of the Police Chief.

Automobile: The Town shall provide a police vehicle for use by the Police Chief and shall pay all attendant operating, toll, parking and maintenance expenses and insurance. The vehicle is to be used by the Police Chief in connection with the performance of his duties as Police Chief and

for his professional growth and development. Since the Police Chief is required to be “on call” twenty-four (24) hours a day and is required to report to an incident or event, the police vehicle may be used for personal reasons during periods of active work, but may not be utilized for personal travel during periods of approved leaves (e.g. vacations, extended periods of sick leave, etc.).

Mobile Phone/PDA Device: The Police Chief is required to maintain and utilize a mobile device supplied by or reimbursed by the Town.

Health and Life Insurance Benefits: The Town shall contribute to the Health/Dental benefits for the Police Chief an amount of dollars equal to the current CAL PERS Family premium for the Kaiser Health plan and Delta Dental Health plan for the Police Chief and his eligible dependents.

The Town will pay premium for life insurance coverage of \$100,000 for the Police Chief.

The Police Chief is eligible to be reimbursed for eye exams, prescription glasses/contacts, vision plan premiums paid out of pocket and co-pays for vision plans as required for the employee and dependents. The annual fiscal year amount is \$200. Unused amounts may be carried forward to the next fiscal year. The maximum amount that can be carried over from one year to the next is \$200 for a maximum reimbursement of \$400 in any one fiscal year. Employee must submit copies of receipts indicating the amount and a description of the service or goods paid for by the employee or dependent in that fiscal year to be eligible for reimbursement.

The police chief will receive \$30/month as part of the Town’s wellness program for managers. The payment is to compensate managers for those costs they incur to maintain their mental and/or physical well-being such as gym/club memberships, health therapies, and recreational/educational classes.

Retirement: The Police Chief is enrolled in the California Public Employee’s Retirement System (3% @ 55 safety formula,) and pays the full 9% employee portion of his retirement. The Police Chief will pay 3% of the Town’s portion of retirement for a total of 12% employee payment towards retirement. This 12% paid portion will be tax deferred to the extent permitted by law, the Town’s contract with CalPERS and any other applicable CalPERS requirements.

Retiree Health Benefits: The Town will reimburse the Police Chief, upon retirement from the Town of Fairfax an amount up to the CalPERS Kaiser Employee only Basic Monthly Rate to cover medical insurance premiums (HMO and/or Medicare) based upon the following formula:

10 years of service	50%
15 years of service	75%,
20 years of service	100%

Upon Retirement, the former Police Chief shall annually submit written evidence of medical coverage (e.g. premium bill from health care insurance provider and related proof of Medicare premiums when eligible/applicable) to the Town as requested to be eligible for reimbursement. Should proof not be provided after a good faith effort by the Town to obtain documentation, the

Town may withhold reimbursement. It is understood that to continue in the CalPERS health plan during retirement, that the employee is required to sign up for Medicare when eligible as outlined in the CalPERS Medicare Enrollment Guide.

Retirees enrolled in a CalPERS health plan understand that premium reimbursements from the Town include the Town's cost to CalPERS for the Minimum Employee Contribution (MEC) established by PEMCHA if applicable. The employee's monthly premium from their chosen health plan is then reduced by the amount of the Town's MEC contribution. If the employee is not part of the CalPERS health plan and the Town still has a cost established by PEMCHA, the employee's reimbursement from the Town will not be reduced.

This retiree Health Benefit will continue as stated above after this agreement expires.

Professional Membership Fees: The costs for membership in professional organizations necessary and relevant to the job of Police Chief, as approved in the discretion of the Town Manager, shall be paid for by the Town.

Indemnification: To the extent required by, and in accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), Town shall defend, save harmless, and indemnify 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 of Employee's duties as Police Chief (and, as provided herein, as acting Town Manager) . Town will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon.

Limitations/Reimbursements: Notwithstanding any other provision in this Agreement, and in accordance with California Government Code Sections 3511.1, 3511.2, 53243, 53243.1 and 53243.2, the following limitations apply to Town's obligations to Employee:

(a) In the event Employee is placed on paid leave pending an investigation, Employee shall reimburse such pay to Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

(b) In the event Town pays for Employee's legal criminal defense, he shall fully reimburse such funds to the Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

(c) If this contract is terminated, any cash settlement related to the termination that Employee may receive from Town must be fully reimbursed to Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

Severability of Provisions: If any clause or provision of this contract shall be determined to be illegal by a court of competent jurisdiction, the remainder of this contract shall not be affected thereby.

Jurisdiction and Venue: This agreement shall be construed in accordance with the laws of the State of California, and the parties agree that venue shall be in Marin County, California.

Entire Agreement: This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Modifications and amendments to this agreement, including any exhibit or appendix, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

Modification: No change or modification of this contract shall be valid unless it shall be in writing and signed by both of the parties.

Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

Execution: IN WITNESS WHEREOF, the Fairfax Police Department has caused this agreement to be duly executed by the Town of Fairfax and the Police Chief, the day and year first written above.

On Behalf of the Town of Fairfax:

Accepted By:

Garrett Toy, Town Manager

Rico Tabaranza, Police Chief

Date: _____

Date: _____

NOTE: Exhibits will be distributed prior to the Council meeting