



TOWN OF FAIRFAX

STAFF REPORT

July 7, 2021

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adopt resolution to appoint and approve contract for interim Town Manager

RECOMMENDATION

Adopt resolution to appoint and approve contract with Adam Politzer to be interim Town Manager.

DISCUSSION

With the pending departure of the current Town Manager on July 13th, the Council met in closed session to discuss the steps for finding a new Town Manager and the options for maintaining continuity of leadership throughout the recruitment process. The Council decided that the best approach was to appoint an interim Town Manager to run the organization during the recruitment. The Council requested staff to identify qualified candidates for consideration and to contact the candidates to determine their interest in an interim Town Manager position.

Staff reached out to numerous candidates and discovered most were unavailable due to previous commitments. However, we got extremely lucky when Adam Politzer, the recently retired manager of the City of Sausalito, expressed interest. The Council interviewed Adam in closed session and determined that Adam Politzer could best fill the interim role.

Adam Politzer is a consummate professional with 33 years of experience in municipal leadership. He retired after 13 years as the Sausalito City Manager. As a result, Adam is very familiar with the structure and workings of the numerous JPA'S and special districts in Marin, has developed and worked with shared services models, has worked closely with the other Marin Managers, and has detailed knowledge of the various countywide efforts to address regional issues such as homelessness. In addition, Adam's daughter, Hannah, did work for the Town as an interim Deputy Town Clerk in 2019, and as a result, Adam did observe Town Council meetings. The bottom-line is that Adam can hit the ground running with only a minimal learning curve.

Mr. Politzer is a CalPERS retiree and would be employed by the Town as a Retired Annuitant under CalPERS regulations. California Government Code regulates compensation for retired annuitants and defines specific rules for the appointment.

The applicable California Government Code Sections follow:

- 7522.45(f) requires a 180-day bona-fide break in service. Adam has met this requirement.
- 7522.56(e) requires that:

1. compensation during the appointment must not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed in the publicly available pay schedule for the agency, and
2. the retired annuitant must not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

The Town Manager salary range can be found on the Town's publicly available wage schedule which is adopted as part of the annual budget each year. The hourly equivalent is \$100.53 per hour.

- 21221(h) allows a retired annuitant possessing the specialized skills deemed necessary by a governing body to successfully fill a vacant position, to be appointed once to the vacant position during recruitment for a permanent appointment.
- 21221(h) and 7522.56 limits retired annuitant hours to 960 in a fiscal year for all retired annuitant positions with any CalPERS employers.
- 20220 requires the enrollment of a retired annuitant in CalPERS solely for recordkeeping purposes and the reporting of retired annuitant hours within 30 days of the end of a pay period.

Per CalPERS regulations, staff recommends making this appointment effective July 13, 2021 based on the specialized skills possessed by Adam Politzer and allowing Adam Politzer to serve faithfully through the appointment of a new Town Manager.

FISCAL IMPACT

The cost of a retired annuitant appointment is approximately \$16,085 per month based on 160 hours/per month at \$100.53/hr. No budget adjustments are required because the costs for an interim Town Manager is significantly less than the monthly costs of the full-time Town Manager position when you consider medical, health, and other benefits (e.g., deferred compensation, vacation). The recruitment of a new Town Manager is estimated to take between four to six months.

ATTACHMENT

Resolution w/Agreement

RESOLUTION 21-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
APPOINTING ADAM POLITZER AS TOWN MANAGER ON AN INTERIM BASIS
AND APPROVING EMPLOYMENT CONTRACT**

WHEREAS, Government Code Sections 7522.56 and 21221(h) permit the Town of Fairfax (“Town”) to appoint a California Public Employees’ Retirement System (“CalPERS”) retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Town Manager will be vacant at close of business on July 13, 2021, with the departure of the incumbent employee, Garrett Toy; and

WHEREAS, in order to ensure continuity in the operation and management of the Town, the Town Council desires to retain the services of Adam Politzer, who is a retired member of CalPERS, to serve as interim Town Manager, effective July 13, 2021; and

WHEREAS, Adam Politzer has extensive experience in managing, directing, and overseeing an organization like the Town given his prior experience as Town Manager of the City of Sausalito; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the recruitment process is active with the Town Council’s approval of an agreement with Ralph Andersen and Associates on July 7, 2021, to begin the recruitment process for a permanent replacement; and

WHEREAS, the 180-day wait period requirement set forth in Government Code Section 7522.56(f) does not apply because Adam Politzer has been retired for more than 180 days; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Town Manager commences his or her employment or, if earlier, the date that this appointment is terminated by the Town Council or Adam Politzer; and

WHEREAS, it is understood by the Town Council and Adam Politzer that the combined total hours to be worked by Adam Politzer in any fiscal year, for all retired annuitant positions with any CalPERS employer, shall not exceed the 960-hour

limitation set forth in California Government Code Sections Section 7522.56(d) and 21221(h); and

WHEREAS, the compensation paid to retired annuitants cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal an hourly rate; and

WHEREAS, the base annual salary for this position is \$209,095 and the hourly equivalent is \$100.53; and

WHEREAS, the hourly rate to be paid to Adam Politzer is \$100.53; and

WHEREAS, Adam Politzer will not receive any other benefits, incentives, compensation in lieu of benefit or any other form of compensation in addition to this hourly pay rate; and

WHEREAS, pursuant to Government Code Section 7522.56(e)(1), Adam Politzer must certify in writing to the Town Council upon accepting an offer of employment that he has not received any unemployment insurance compensation arising out of prior employment with a public employer that is subject to Section 7522.56 during the 12-month period preceding the effective date of this appointment. Execution of the Agreement for Interim Town Manager Services shall fulfill this requirement.

NOW THEREFORE, THE TOWN COUNCIL OF CITY OF FAIRFAX RESOLVES AS FOLLOWS:

SECTION 1. All facts set forth in the background section of this Resolution are true and correct.

SECTION 2. Adam Politzer has the specialized skills needed to perform the work required of the Town Manager position on an interim basis until a permanent Town Manager is appointed by the Town Council and thereafter begins service.

SECTION 3. The Town Council hereby appoints Adam Politzer as interim Town Manager effective July 13, 2021, until the date immediately preceding the date on which the permanent replacement for the vacant position of Town Manager commences his or her employment, unless earlier terminated, pursuant to the authority provided under Government Code Sections 21221(h) and 7522.56, pending the recruitment, selection and employment of a permanent Town Manager , to provide the specialized skills necessary to manage the Town of Fairfax effectively.

SECTION 4. The employment agreement with Adam Politzer, a copy of which is incorporated herein as Exhibit "A", is approved by the Town Council.

SECTION 5. The Mayor is authorized to execute said agreement on behalf of the Town, with such technical amendments as may be deemed appropriate by the Mayor and Town Attorney.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax, held in said Town on the 7th of July 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

BRUCE ACKERMAN, Mayor

Attest: _____
Michele Gardner, Town Clerk

TOWN OF FAIRFAX
Retired Annuitant Employment Agreement

THIS AGREEMENT made and entered into this _____ day of _____, 2021, by and between the Town of Fairfax ("Town") and Adam Politzer ("Politzer").

R E C I T A L S:

- A. Town is making this appointment under Governor's Executive Order N-25-20 and incompliance with CalPERS Circular Letter 200-015-20.
- B. Politzer has specialized skills required to successfully perform the duties as Interim Town Manager position during the active recruitment for Town Manager.
- C. Town desires to retain the services of Politzer in accordance with California GovernmentCode Section 21221(h) and 7522.56 and Politzer agrees to provide certain services to Town under the strict terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises and conditions in this Agreement, Town and Politzer agree as follows:

- 1. Employment and Title.** Town hereby hires Politzer as its Interim Town Manager beginning July 13, 2021. Politzer accepts such employment subject to the terms and conditions of this Agreement.
- 2. Term of Employment.** The term of this Agreement shall commence on July 13, 2021 and shall continue until Town hires a permanent Town Manager or until it is terminated by either party as hereinafter provided.
- 3. Duties.** Politzer shall serve as Town's full time Interim Town Manager, shall perform the duties described in the job description attached as Exhibit A to this Agreement, and shall be subject to the policies, restrictions and directions provided by Town Council from time-to-time and subject to the consent of the Council. Politzer acknowledges that the position of Interim Town Manager is a position of high visibility before the public. Politzer shall conduct himself before the public, both during and outside of regular working hours, in a manner that reflects favorably upon Town. The Town shall, at Town expense, supply Politzer with sufficient equipment to allow Politzer to perform Politzer's duties and obligations under this Agreement, including without limitation a tablet or laptop computer for Politzer's use while performing the services under this Agreement.
- 4. Compensation and Benefits.** In consideration of Politzer's performance of the foregoing duties, Town shall compensate Politzer as follows, unless and until this Agreement is terminated as hereinafter provided. Politzer is a California PublicPolitzer Retirement System (CalPERS) annuitant. Politzer shall receive the following salary and benefits for services provided under this Agreement:

a. Hourly Compensation

Town shall pay Politzer at the rate of \$100.53 for each hour of service Politzer provides to the Town. This hourly rate is calculated in accordance with CalPERS regulations. Politzer' compensation shall be payable bi-monthly (twice a month on the 15th and last day of the month) at the same time as Town employees receive their regular paychecks. Politzer is an hourly employee entitled to overtime compensation.

b. Benefits

As a retired CalPERS annuitant Politzer is precluded from receiving any benefits,incentives, compensation in lieu of benefits or other form of compensation in addition tohourly pay. Therefore, while Politzer remains a retired CalPERS annuitant, Politzer shall receive no benefits, incentives, compensation in lieu of benefits or other form of compensation in addition to hourly pay under this Agreement.

c. Deferred Compensation Plan

As of the date of this Agreement, the Town provides a Deferred Compensation Plan pursuant to an agreement or agreements with financial institution(s) qualified to provide such plans under applicable provisions of the Internal Revenue Code. Subject to the termsand conditions of such agreement(s) and the Deferred Compensation Plan thereby established, the Town and Politzer acknowledge that Politzer may be eligible to participate in said plan while serving as Interim Town Manager. All contributions to that Plan must be made by Politzer.

d. Expense Reimbursement

Subject to the policies, restrictions and direction of the Town, the Town will pay or reimburse Politzer for all reasonable expenses incurred in the performance of Politzer' duties and obligations pursuant to this Agreement including, without limitation, reimbursement of Politzer' vehicle expenses, based on actual mileage for such use, payable at the rate established annually by the United States Internal Revenue Service.

Section 5. Jurisdiction. The formation, construction and performance of this Agreement shall be construed in accordance with the laws of the State of California. Any action brought relatingto this Agreement shall be heard exclusively in a State court in the County of Marin.

Section 6. Integration. This Agreement constitutes the sole and complete agreement betweenthe parties. This Agreement supersedes any ordinance, rule, regulation, policy, or procedure ofthe Town that is inconsistent with the Agreement. No amendments to this Agreement may be made except in writing and signed by the parties.

Section 7. Severability. If any of the provisions of this agreement are held invalid or unenforceable, the remainder shall remain in full force and effect.

Section 8. Miscellaneous.

A. Politzer has read this entire Agreement and Politzer has freely and voluntarily entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

B. In accordance with California Government Code Sections 7522.56(e)(1) and (g) Politzer certifies and represents to Town that: (1) he has not received any unemployment insurance compensation arising out of prior employment during the 12-month period prior to the appointment described in this Agreement; and (2) he did not receive and did not accept any retirement incentive upon her retirement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Town of Fairfax

Bruce Ackerman
Mayor

Date: _____

Adam Politzer

Date: _____

ATTEST:

APPROVED AS TO FORM (optional):

Michele Gardner, Town Clerk

Janet Coleson, Town Attorney