



# FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

<b>MEETING DATE:</b>	August 2, 2023
<b>PREPARED FOR:</b>	Mayor and Town Council
<b>PREPARED BY:</b>	Heather Abrams, Town Manager
<b>SUBJECT:</b>	Notice of amendments to employment agreement with the Police Chief

## RECOMMENDATIONS

Receive notice of amendments to the employment agreement with Rico Tabaranza, Police Chief, for the period of July 1, 2023 through June 30, 2024.

## BACKGROUND

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated that the Town would place final tentative employee agreements on two successive Town Council agendas - the first for notice of amendments to the agreement, the second for Council vote. 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. This represents the first notice of amendments to the Chief's agreement.

## DISCUSSION

The Police Chief has had an employment agreement with the Town since July 1 2021. While the job performance of the Police Chief is evaluated every July including a review of his salary and benefits.

Based on negotiations with the Chief, I recommend the following amendments effective July 1, 2023:

- Cost of Living Adjustment (COLA) of 5%, which matches the FPOA MOU.
- Increase in Administrative Leave days (from 10 days) to 15 days per year.
- Ability to cash out 10-days-Administrative-Leave/year (reduces Town liability vs. banking leave.)
- Add Juneteenth Holiday, same as all other Town employees.
- Revise Compensation for Temporary Assignment to match other Town Department Heads
- Add \$200 monthly automotive allowance to cover electrical charging of the Chief's Town EV required when not charging at Town Hall.
- Life insurance premium for policy of \$150,000 (previously \$100,000), so premium cost would increase a few dollars per month.
- Add 3.5% Deferred Compensation.

## FISCAL IMPACT

All police safety salaries are paid from Budget item 01-411-402, including the Chief. FPOA COLAs were budgeted, smaller adjustments for one employee are not specifically budgeted in advance of negotiation, however, negotiations were expected. The budget does not need to be adjusted at this time.

## ATTACHMENT

Restated and Amended Employment Agreement in red line form.

## EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (“Agreement”) is effective as of July 1, 2023-1, 2024, 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, 2023, at 12:01 A.M, until terminated by the Employer or Employee. ~~If the effective date is later than July, 1, 2023, all salary and benefits are retroactive.~~

**Duties:** The duties of the Police Chief are as set forth in this paragraph, 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 approved side letters between the Town of Fairfax and the Fairfax Police Officers Association (FPOA), Which is attached hereto and incorporated as Exhibit A.

**Base Salary:** Effective July 1, 2023, the The Police Chief base salary will be shall receive the sum of \$16,383.58 per month base salary. This represents a 5% increase to original base salary. 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 ~~fifteen (15)~~~~ten (10)~~ administrative leave days per fiscal year. ~~Fifteen~~~~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. The Police Chief, at his discretion, may convert to cash, ten days of unused administrative leave days once, 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 ~~twelve (12)~~~~eleven (11)~~ paid holidays at 10 hours per holiday for a total of ~~120~~~~110~~ hours per year.

- ~~January 1, New Year's Day~~
- ~~June 19, Juneteenth~~
- 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 9<sup>th</sup>, 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 ~~7.5~~~~5~~% of base pay for the time worked in the higher classification beginning on the ~~4~~6th 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.). The Police Chief shall receive \$200 per month automotive allowance to cover home charging electricity costs or related expenses associated with the Town’s fully electric vehicles.

**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 ~~\$150,000~~\$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.

Deferred Compensation. In addition to Base Salary, The Town shall contribute, an amount equal to 3.5% of the Police Chief’s base salary, annually, to a deferred compensation account.

**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:

\_\_\_\_\_  
Heather AbramsGarrett Toy, Town Manager

\_\_\_\_\_  
Rico Tabaranza, Police Chief

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

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