



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes City Commission Special Meeting

CITY COMMISSIONERS

Linda M. Yates, Mayor
Vanessa Carusone, Vice-Mayor
Christopher B. Hanks, Commissioner
Jill Luke, Commissioner
Debbie McDowell, Commissioner

APPOINTED OFFICIALS

Peter Lear, Interim City Manager
Amber L. Slayton, Interim City Attorney
Patsy Adkins, City Clerk
Kathryn Peto, Deputy City Clerk

Tuesday, June 6, 2017

9:00 AM

CITY COMMISSION CHAMBERS

Interim City Manager Contract

NOTE: This is a draft copy of the minutes of the 06-06-2017 Commission Special Meeting, has not been approved by the Commission and is subject to change.

CALL TO ORDER/ROLL CALL

The North Port Commission Special Meeting was called to order at 9:00 a.m. in City Chambers by Mayor Yates.

Present: Mayor Yates; Vice-Mayor Carusone; Commissioners Hanks, Luke and McDowell; Interim City Manager Lear; Assistant City Manager Schult; Interim City Attorney Slayton; City Clerk Adkins; Recording Secretary Hale and Assistant Police Chief Pelfrey.

The Pledge of Allegiance was led by the Commission.

1. APPROVAL OF AGENDA – COMMISSION

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to approve the Agenda as presented. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Commissioner Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A motion was made by Commissioner McDowell, seconded by Commissioner Luke, to suspend the Commission rules for Procedure for this meeting. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Commissioner Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

2. PUBLIC COMMENT:

There was no public comment.

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Contract for the City Manager

Interim City Manager Lear introduced the agenda item. Following a concern, Assistant City Attorney Slayton stated there is no legal prohibition or conflict with Mr. Lear being present during the discussion. The Commission was also provided with the other Charter Officer Contracts. Subsequent to a question, Mr. Lear affirmed he is interested in being appointed as City Manager.

Discussion ensued: (1) subsequent to a question, it was stated the last City Manager's contract was used because it is the template provided by the International City/County Management Association (ICMA) and some of the differences include the termination clause, the 457 Retirement Plan, the car allowance, and the health insurance provision; (2) the start date and termination provisions in the Contract were discussed.

There was a consensus that the Appointment will start at the time the Agreement is executed and the document will be updated throughout.

#5 DURATION OF APPOINTMENT

Discussion ensued: (1) the background and reference checks provide continuity to the appointment of a City Manager; (2) background checks normally are performed by a third-party administrator, take approximately seven days at a cost of \$45, and take historical information on the applicant for the last seven years regarding a driving record from the DMV, criminal history, and residency.

There was a consensus leave the background check provision as it is stated in the Contract.

#4 PERFORMANCE EVALUATION

Discussion ensued: (1) the anniversary date for the Performance Evaluation should follow the same guideline as the start date of the Agreement; (2) it was noted that the Commission may review and evaluate the City Manager's performance at any time.

#6 COMPENSATION OR SALARY

Discussion ensued: (1) attaining the status of credentialed City Manager through ICMA takes approximately two years; (2) it was clarified that the 457 Retirement Plan contribution of 7% of salary is not part of the Mayor's Sample Employment Agreement; (3) travel allowance and starting salary were debated; (4) during the discussion regarding when to implement a raise in connection with the ICMA certification, Interim City Attorney Slayton recommended: [a] to specify in the contract when the 10% salary increase is received, at the annual anniversary of the effective date of the contract or upon receipt of the certification; and [b] to add clarifying language whether this is in addition to any increase the Commission may grant for the annual review; (5) it was noted the annual evaluation should not negatively affect the accreditation compensation increase if the obligation has been met within the specified timeframe; (6) clarification was provided that the current salary at the time the ICMA certification is attained will be considered the base salary from which the 7-10% raise will be added.

There was a consensus that the starting salary shall be \$150,000; that within three years the City Manager is required to obtain the ICMA-CM certification; that

the increase will take effect upon receipt of the certification; that he is eligible for up to 10%, no less than 7% on that current base pay and to clarify that the evaluation does not reduce that increase for certification.

#6 COMPENSATION OR SALARY

Discussion continued: (1) following a question, Interim City Attorney Slayton recommended to include the ICMA credential requirement under #12, Professional Development, but add the salary to #6, Compensation or Salary; (2) citing the last sentence in #6, and after it was noted that the City does not have a policy regarding an established minimum or maximum annual gross salary for a City Manager, it was decided to leave the last sentence as it stands; (3) after a discussion regarding a salary study for Charter Officers and Commissioners included with the employee study, Assistant City Manager Schult stated that the City Manager's Office and the City Clerk's Office will research Commission direction regarding that and report back to the Commission.

There was a consensus to include the Charter Officers in the Employee Salary Study as long as it will not delay anything.

Recess 10:54 a.m. - 11:11 a.m.

#7 TERMINATION

Discussion ensued: (1) subsequent to a question regarding the "with good cause" removal clause, Interim City Attorney Slayton noted; [a] that Florida is an "at will" employment State where the employer and employee may terminate at any time and there is no legal entitlement to severance; [b] it was stated the contract itself would govern any severance stipulation; (2) it was opined that the purpose of severance pay is to protect the City against future litigation costs; (3) it was noted that the City Charter states that a Charter Officer shall be removed from office "for good cause"; (4) after a question, Interim City Attorney Slayton stated: [a] that the terms in the contract define the parameters of the contract but the contract cannot be used to define the City Charter; [b] if the court looks at the City Charter to define good cause, the Court would interpret the Charter and what "good cause" means through statutory interpretation and possibly case law, but not the contract; [c] the process of a court review was explained; (5) adding a "mutual separation agreement" provision was discussed; (6) moral turpitude was discussed and how it may be exercised as a viable provision in a contract; (7) cancellation with and without cause was discussed as found in Mr. Lear's Sample Contract, paragraph 6.(c); (8) discussion ensued regarding Mayor Yates' Sample Contract, paragraph 7.(b) concerning being suspended from office without pay.

There was a consensus that in Mayor Yates' Sample Contract, paragraph #7 Termination, provision (b), the sentence pertaining to suspension without pay, shall be changed to read: "In the event the City Manager is suspended from office the suspension period shall be with pay."

Discussion continued: (1) in response to a question, Interim City Attorney Slayton stated that after a brief review of the City Charter Section 12.04 regarding the removal of a Charter Officer, there should be no problem with including a provision similar to Mr. Lear's Sample Contract, item #6 Termination, provision (c); [b] Florida Statutes Chapter 215.425(4)(a), subsection (1) requires that severance pay provided may not exceed amount greater than 20 weeks of compensation; and subsection (2) requires, in an employment agreement, a prohibition to provide severance pay when the employee was fired for misconduct as defined in FS 443.036(29); [c] pending a Commission decision to include the severance provision into the final contract, she suggested to include subsection (2) with the statutory definition to ensure there is no ambiguity; (2) it was suggested to only use the first paragraph in #6, Termination, subsection (c) in Mr. Lear's Sample Contract; (3) recommendations were proffered regarding the number of weeks for severance pay; (4) subsequent to a question, the "waiver and release"

phrase was explained.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Hanks, to direct Interim City Attorney Slayton to develop an amendment to the Mayor's Proposed 7.(b) regarding termination, to include the following changes: (1) adding similar language that was in the Lear proposal from page 6, #6, the first paragraph of (c), as developed by the Interim City Attorney with 16 weeks instead of 20 weeks and adding a waiver of release section; (2) changing the date from 7. (a) to 30 days written notice; (3) changing 7.(b) in reference to suspension with pay; (4) changing #4, regarding failure to perform, to add a six-month time period to fix complaints of the Commission, similar to a Performance Improvement Plan (PIP). The motion carried by the following vote:

Yes: 5 - Mayor Yates, Commissioner Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

#4 PERFORMANCE EVALUATION

Following a recommendation to require a performance evaluation at least once a year, Interim City Attorney Slayton will review the stipulation.

There was a consensus that #4 shall be clarified to state that the Performance Evaluation will be at least once a year.

Interim City Attorney Slayton clarified that the first sentence in #4 permits the Commission to hold a performance review at any time, and the second sentence requires at least once a year.

#6 TERMINATION from Mr. Lear's Sample Contract

Following a concern, clarification was requested in paragraph (a) regarding "under these circumstances."

There was a consensus in Mr. Lear's Sample Contract, #6 Termination, the phrase in the second sentence in provision (a), "when termination occurs under these circumstances" shall be clarified to mean when Mr. Lear resigns on his own volition. Assistant City Attorney Slayton will wordsmith the phrase, if necessary.

#8 FLORIDA RETIREMENT SYSTEM (FRS)

Questions and discussion ensued: (1) the 457 Retirement Plan was explained to be an optional government version of a 401(k), and regular employees are allowed to participate; (2) the City's FRS contribution, as mandated by State Law, for senior management is 21.77% of annual salary; (3) after noting that Mr. Lear's Sample Contract requested a 7% contribution for the 457 Plan, a counter offer of 3.5% was suggested; (4) it was stated that an employee may voluntarily contribute an additional percent of salary to the 457 Plan, and the maximum amount is set by IRS; (5) concern was expressed that: [a] the amount paid into the FRS Plan doesn't always equal the payout amount; [b] the low starting pay amount is somewhat balanced with allowing compensations in the 457 Plan; (6) Mayor Yates: [a] opposed having two separate retirement plans; [b] the benefits for the high-level Charter Officers should be the same; and [c] Charter Officers may participate and contribute on their own; (7) Commissioner McDowell stated that two retirement plans are fine but in fairness, Mr. Lear can participate in the 457 Plan on his own.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to include #7 on page 7 and 8, as proposed by Mr. Lear's Sample Contract, offering a deferred compensation plan amount equal to 3.5% of the employee's annual salary. The motion carried by the following vote with Mayor Yates and Commission McDowell dissenting for reasons previously stated:

Yes: 3 - Commissioner Carusone, Commissioner Hanks and Commissioner Luke

No: 2 - Mayor Yates and Commissioner McDowell

#9 INSURANCE

Discussion ensued: (1) concern was expressed that Charter Officers are treated differently than regular employees when it comes to insurance coverage; (2) following a question, Interim City Manager Lear stated that his current family coverage was the same as other employees; (3) the City's health insurance plan tiers were explained; (4) clarification was provided that the Deputy City Clerk's coverage is base insurance for individual only, and City Clerk is the base plus spouse coverage; (5) subsequent to a question, it was stated that other options and benefits are included in the Contract, in #9, section (3).

A motion was made by Commissioner McDowell, to offer the City Manager solely with base medical, vision, and dental insurance coverage under the City's group benefit plan; term life insurance for one year's face value of salary; and any other insurance coverage provided by employees excluding any voluntary plans offered. There was no second and the motion failed.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to amend #9, Insurance, to provide and pay for the individual medical, dental, vision, insurance plan regardless of plan version. The motion carried by the following vote.

Yes: 5 - Mayor Yates, Commissioner Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

#9 INSURANCE

Discussion continued: (1) following a question pertaining to the Term Life Insurance, Interim City Manager Lear stated he agreed to the one-year's salary amount; (2) the last sentence regarding when coverage will begin cannot be deleted and Interim City Manager Lear stated that he will not change insurance coverages before regular Open Enrollment.

A motion was made by Commissioner Luke, seconded by Commissioner Hanks, to continue this item at the earliest possible convenience. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Commissioner Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

3. PUBLIC COMMENT:

There was no public comment.

4. COMMISSION COMMUNICATIONS

Nothing to report.

5. ADMINISTRATIVE AND LEGAL REPORTS:

Interim City Manager Lear stated that the City Clerk is trying to schedule a July 18, 2017 Special Meeting to review recommendations for the new insurance plan proposals.

There was a consensus to have the City Clerk move forward with scheduling the Special Meeting to discuss the insurance plan options for July 18, 2017.

Interim City Attorney Slayton requested that the Commission grant Mayor Yates permission to sign off and provide consent to substitute Ms. Slayton as the Attorney of Record in Mr. Moriarty's place in all the City's litigation and administrative actions that are pending.

There was a consensus to grant Mayor Yates permission to sign off and provide consent to substitute Ms. Slayton as the Attorney of Record in Mr. Moriarty's place in all the City's litigation and administrative actions that are pending.

6. ADJOURNMENT:

Mayor Yates adjourned the North Port City Commission Special Meeting at 1:14 p.m.

City of North Port, Florida

By: _____
Linda M. Yates, Mayor

Attest: _____
Patsy C. Adkins, MMC, City Clerk

Minutes approved at the City Commission Regular Meeting this ____ day of _____, 2017.