



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: March 8, 2022

Item Number: 23

Item Description: Request to Adopt a Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services

Requesting a revision to an incorrect word listed in the final sentence on the resolution. The word “creative” should be changed to “created”.



Office of the City Manager

ACTION CALENDAR

February 22, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services

Subject: Request to Adopt a Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

RECOMMENDATION

Staff respectfully recommends that the City Council adopt a resolution approving an exception to the 180-day waiting period for hiring a retired annuitant as an extra-help employee in the Department of Health, Housing & Community Services, due to their specialized skills that are necessary to perform work of a limited duration, and to prevent stoppage of public business during the Covid emergency.

FISCAL IMPACTS OF RECOMMENDATION

The cost of this increase will be paid from general fund.

CURRENT SITUATION AND ITS EFFECTS

The Public Employees' Pension Reform Act of 2013 (PEPRA) made substantial changes to public employee pension laws in California. One of those changes requires retired annuitants to be separated from employment for at least 180 days before returning to work for an employer in the same retirement system from which they receive a pension. An exception may be made if the governing body adopts a resolution to waive the waiting period for separation. The waiver allows an employer to hire a retired annuitant to perform work of limited duration, such as the elimination of backlogs, limited term special projects, and work that is in excess of what regular staff can reasonably perform.

The Health, Housing, and Community Services (HHCS) Department holds the responsibilities of an independent local health jurisdiction (LHJ) and is responsible for addressing public health prevention and emergencies as well as protecting the physical health, mental health, and basic needs of those most vulnerable. The department is also responsible for producing, preserving, and supporting affordable housing for Berkeley residents and working with non-profit agencies to support the unhoused population. Since February 2020, the City of Berkeley has been independently responsible for addressing the COVID-19 pandemic; including implementation of Health Officer Orders, creating a new COVID-19 response unit, implementing an array of new

activities to protect the public such as testing, vaccinations, enhanced case investigation, and contact tracing, and managing outbreaks. The City has also supported the development of respite sites for housing the most vulnerable, moved people from respite sites in to permanent housing, decompressed shelters and created new shelter spaces, and enhanced outreach services, food distribution, and toilet and shower availability. While much of this work was conducted through the Emergency Operations Center (EOC), many of the responsibilities resided, and continue to reside, with HHCS. The department's overall responsibilities were further expanded as a variety of State and Federal grants were awarded to the City to support the COVID response, nearly all of which were managed, and continue to be managed, by HHCS's Administrative and Fiscal Team in the Office of the Director; overseen by the HHCS Deputy Director.

In January 2021, HHCS had a vacancy rate of 20%, a Director with less than a year tenure, and was engaged in an active recruitment process for a new Deputy Director due to the pending retirement of the incumbent; a long-time City of Berkeley employee. Due to the enhanced workload brought on to the department by the pandemic, the high vacancy rate, and the need for continuity of expertise, the retiring Deputy Director stepped up to provide continued support to the department by coming back as a retired annuitant at the request of the City of Berkeley, and consistent with Government Code Sections 7522.56 and 21224. With the expanded work of the department due to the ongoing, State-Wide, COVID-19 state of emergency, this function has been critical to ensuring meticulous management of specialized Federal and State healthcare funding streams deployed to protect people from COVID-19, other critical health conditions, and provide care and shelter for the unhoused population. Accordingly, it was necessary to hire the retired annuitant as extra help prior to the end of the 180-day waiting period, due to their specialized skills and to prevent stoppage of public business during the Covid emergency.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This recommendation supports the strategic plan priority project to retract and retain a talented and diverse City government workforce.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Donald E. Ellison, Interim Human Resources Director, 510-981-6807.

Attachments:

1: Resolution

2: Notice of Appointment

RESOLUTION NO. ##,###-N.S.

A Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

WHEREAS, in compliance with Government (Gov.) Code Section 7522.56 of the Public Employees' Retirement Law, the City Council of the City of Berkeley must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

WHEREAS, Kelly Wallace retired from the City of Berkeley, Health, Housing, and Community Services Department, from the position of Deputy Director of Health, Housing, and Community Services, effective February 2, 2021; and

WHEREAS, Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is August 1, 2021, without this certification; and

WHEREAS, Gov. Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City of Berkeley, and Kelly Wallace certify that Kelly Wallace has not, and will not, receive a Golden Handshake or any other retirement-related incentives; and

WHEREAS, the City of Berkeley hereby ratifies the appointment of Kelly Wallace as an extra-help retired annuitant to perform similar duties to a Deputy Director of Health, Housing, and Community Services, for the City of Berkeley of Health, Housing, and Community Services under Government Code Section 21224, effective February 7, 2021; and

WHEREAS, the entire employment agreement, contract or appointment document between Kelly Wallace and the City of Berkeley has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, the compensation paid to retirees 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 the hourly rate; and

WHEREAS, the maximum base salary for this position is \$23,783.07 per month and the hourly equivalent is \$137.21, and the minimum base salary for this position is \$3,177.20 per month and the hourly equivalent is \$18.33; and

WHEREAS, the hourly rate paid to Kelly Wallace will be \$90.07; and

WHEREAS, Kelly Wallace has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Berkeley hereby certifies and ratifies the nature of the appointment of Kelly Wallace as described herein and detailed in the attached employment agreement, and that this appointment was necessary to fill a critically needed role similar to Deputy Director of Health, Housing, and Community Services, for the City of Berkeley by February 7, 2021, due to their specialized skills; to prevent stoppage of public business during the Covid emergency; and to maintain compliance with the deployment of on-going and new State and Federal Resources ~~creative-created~~ specifically to address COVID-19, including complex health care grants, Medi-Cal, Housing and Urban Development funds, and other specialized funding streams.