



Date: August 12, 2015
To: Mayor and City Council
From: Alan H. Shear, Assistant City Manager
Subject: Appointment of New Police Chief and Approval of Employment Agreement

Recommendation

Appoint Manjit Sappal as the new Chief of Police; approve Mr. Sappal's Employment Agreement, and authorize the City Manager to execute same.

Background

Police Chief Gary Peterson retired from the City in June, 2014. In January, 2015, the City Council directed staff to hire an Executive Search firm to fill the permanent position. Ralph Andersen & Associates was the selected firm hired to conduct the recruitment. A select group of applicants were interviewed in the spring.

After selecting Mr. Sappal as the top candidate, negotiations for the employment contract commenced. The process is complete and the agreement is before Council this evening for approval. The agreement specifies salary and benefit provisions and other terms and conditions of employment similar to those in previous agreements for Chief of Police.

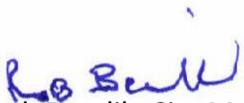
Fiscal Impact

The funds for the Police Chief's salary are currently appropriated in the City's FY15-16 operating budget. There is no impact to the General Fund.

Attachments

- Employment Agreement

APPROVED BY:


Rob Braulik, City Manager

CHIEF OF POLICE
EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 19th day of August 2015, by and between the City of Martinez ("Employer" or "City") and Manjit Sappal ("Employee"), pursuant to these terms and conditions:

SECTION 1. DUTIES

A. Employer hereby agrees to employ Employee as Chief of Police of said City to perform the functions and duties of a Chief of Police as specified under the law, the City's Municipal Code and other City policies and rules, and to perform other legally permissible and proper duties and functions as the City Manager shall from time to time assign. Employee agrees to accept said employment and shall perform said functions and duties in a professional and competent manner entirely satisfactory to the City Manager.

B. The Employer agrees that the said Employee shall be the Chief Administrative Officer of the Police Department and shall report directly to the City Manager, unless otherwise directed. No other employee of the City of Martinez or elected official shall direct, give orders to, or in any way interfere with the subordinates of the Chief of Police, except that in an emergency the City Manager, or his/her designee, may direct members of the Police Department. The Employer further agrees that the Chief of Police shall have all powers, authority and duties enumerated to the Employee by any law, ordinance, resolution or rule.

SECTION 2. TERM

A. Employee shall serve as Chief of Police commencing on August 31st, 2015 and continuing until such time as this agreement is terminated pursuant to Section 6 here in at which time Employee's employment with the City shall terminate. During the term of this Agreement, Employee shall serve at the will of the Employer.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Employee at any time, subject only to the provisions set forth in Section 6 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from this position with the City, subject only to the provisions set forth in Section 6 of this Agreement. Employee agrees to give Employer sixty (60) days advance written notice of the date Employee's resignation will become effective.

SECTION 3. COMPENSATION

For the services to be provided pursuant to this Agreement, Employee shall receive the following compensation:

A. Salary

Employee shall be paid an annual salary of \$175,000 commencing on August 31, 2015. Employee's salary shall be adjusted automatically in an amount equal to any percentage adjustment provided to all other management employees subject to the Management Compensation Plan – Division B- Sworn Employees (as it may be amended from time to time) during the term of this Agreement.

B. Benefits

Employee's benefits and leave accruals shall be governed by the Management Compensation Plan - Division B - Sworn Employees, subject to the exceptions described in the following subsections and any other provision in this Agreement that may be inconsistent with the terms of the Management Compensation Plan - Division B - Sworn Employees.

1. Employee shall not be entitled to Longevity Pay.
2. Employee shall not be entitled to Educational Pay.
3. Employee shall be entitled to Holiday Pay, which shall be disbursed in the same manner

as other sworn employees of the City of Martinez.

4. Uniform Allowance. Employee will receive a uniform allowance of \$1,000 on August 31, 2015. Each year thereafter Employee will be eligible for an annual reimbursement up to \$1,000 for uniforms and equipment upon presentation of proof of purchase to the Finance Manager.
5. Professional Development. In addition, City shall pay, subject to budget appropriations, annually, for the professional dues and subscriptions and at least one professional training or conference opportunity required for Employee's continued participation in national, state, regional and local associations and organizations necessary and desirable for the Employee's professional growth and professional advancement, and for the good of the City, including but not limited to the International Association of Chiefs of Police, the Police Executive Research Forum, the California Police Chiefs' Association and the Contra Costa County Police Chiefs' Association.

C. Cost Sharing

Employee agrees to contribute toward the CalPERS Employer contribution rate and any other employee contribution amounts that may be implemented during the term of this agreement in the same manner and percentage as the other sworn personnel.

SECTION 4. AUTOMOBILE

The City shall provide employee an automobile. City shall be responsible for the purchase, replacement and all necessary insurance for said automobile. Said automobile may be used by the Employee in connection with the performance of Employee's duties as Chief of Police and for Employee's professional growth and development. The Chief for personal reasons may also use it, since the Employee is "on-call" in the event of an emergency.

SECTION 5. PEACE OFFICER STATUS AND BENEFITS

A. Employee shall retain Employee's peace officer status under the laws of the State of California during the term of this Agreement. Except to the extent inconsistent herewith and as provided in subsections B through D below, Employee shall receive the benefit of all laws, statutes, regulations, and entitlements accorded to peace officers of like rank by the State.

B. In the event Employee invokes any rights, which Employee may have, to appeal any punitive action imposed by the City under the California Public Safety Procedural Bill of Rights Act, said appeal shall be heard by a neutral party. Said neutral party shall be selected as follows: five (5) names will be solicited from the Federal Mediation Service of persons who provide arbitration and labor mediation services in the Northern California area. Starting with the City, the City shall have the right to strike one name from the list of five (5), then the Employee shall be entitled to strike a name, and they shall alternate their rights to strike a name until there is only one person's name left. That person shall act as the neutral party to hear the appeal, if any, invoked by Employee hereunder.

C. At the appeal, the only issue the neutral party shall be entitled to address is whether or not the action of the City in punishing the Employee was a gross abuse of discretion and had no basis in fact. Even if the neutral party determines the Manager's or Council's action in punishing the Employee was a gross abuse of discretion and had no basis in fact, the neutral party's determination shall be advisory only and shall in no way be binding upon the City or the City Council. The City Council shall in its sole and unfettered discretion make the final determination of the issues raised by Employee's appeal. The City Council's final decision shall be binding upon both parties.

D. Notwithstanding anything to the contrary stated herein, under no circumstances shall City's termination of Employee be considered "punitive" and if City so terminates Employee, Employee waives any and all procedural or substantive rights Employee may have to challenge, contest, set aside, or annul (1) said termination, (2) the procedures or lack of procedures followed in terminating Employee, and/or (3) the reasons or lack of reasons, including but not

limited to those rights granted under the State and Federal Constitutions, the Martinez Municipal Code, other City regulations and the California Public Safety Officers' Procedural Bill of Rights Act.

E. The appellate rights provided for in this section and the termination provisions of this section and Section 6 supersede any and all regulations, rules, agreements, or any other employee rights or privileges provided by the City and which may or may not be applicable to the termination or appellate rights of Employee.

SECTION 6. TERMINATION OF AGREEMENT

The City and Employee understand and mutually agree the Employee's employment is "at will" and that this Agreement may be terminated with or without cause.

A. In the event the City terminates this Agreement without cause, the Employee shall be entitled to severance pay of a lump sum payment equal to six (6) months base salary, payable within thirty (30) days of the date of termination, subject to restrictions set forth in Government Code Section 53260. Said payment of severance pay shall be in addition to any vacation leave, administrative leave or sick leave, if any, due to the Employee upon Employee's severance or retirement from City service, subject to the City's personnel rules and regulations regarding such leave. Employee shall be allowed to sell back all of Employee's above, unused leave as provided for in the Management Compensation Plan - Division B- Sworn Employees. Employee hereby agrees Employee shall accept such payment as full compensation due from the City as severance pay in exchange for Employee giving a full and complete release of the City, its agents, employees, attorneys, City Council members, or representatives of any kind or nature, from any and all liability or claims of any type or nature relating to the Employee's employment and/or termination of same. Pursuant to Government Code Section 53243.2, Employee agrees to reimburse the City the full amount of any severance pay the Employee receives from the City if the Employee is convicted of a crime involving an abuse of his/her position as Chief of Police.

B. This Agreement shall terminate and City shall not be obligated to make any severance payment upon any of the following events:

1. Employee's willful or intentional failure to perform in accordance with Employee's obligations under this Agreement and/or the City's Municipal Code or with lawful directives given by the City Manager regarding Employee's job performance;
2. Employee's death;
3. Employee's mental incapacity or inability to perform Employee's duties hereunder due to physical or mental disability, for a period of sixty (60) days, as determined by a mutually agreed upon medical doctor;
4. Willful destruction, theft, misappropriation or misuse of City property;
5. Intoxication on duty, whether by alcohol or non-prescriptive drugs;
6. Inexcusable absence;
7. Conviction of a felony or conviction of a misdemeanor; provided that Employee may be placed on administrative leave without pay should Employee be charged with such a crime or crimes;
8. Dishonesty, fraud or misconduct in office;
9. Violation of any conflict of interest laws or regulations;
10. Fraud or dishonesty in securing this appointment;
11. Political activity involving the support of or opposition to candidates for the City Council of the City of Martinez;
12. Violation of state or federal discrimination laws concerning race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex or age concerning either members of the general public or City employee(s); or

13. Willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto.

Nothing in this section shall preclude the termination of this Agreement by mutual consent of both parties hereto. Nothing in this Agreement shall preclude the City Manager from placing Employee on paid, administrative leave.

SECTION 7. OTHER TERMS AND CONDITIONS

A. Employee shall be subject to all City's laws, rules, regulations and policies that are not inconsistent with the terms of this Agreement applicable to all other employees of the City.

B. Employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with or inimical to the employee's duties as Police Chief. The Employee agrees to focus Employee's full professional time, ability and attention to City business during the term of this Agreement. Consequently, the Employee hereby agrees not to engage in any other business pursuits whatsoever or, directly or indirectly, render any services of a business or commercial nature to any other person or organization, for compensation; without the prior written consent of the City Manager. This shall not preclude Employee from teaching at an institution of higher learning from time to time, so long as such activity is not in conflict with the services to be provided by the Employee under this Agreement. Employee must still obtain advanced written approval by the City Manager to engage in such teaching activities.

C. City agrees it will defend, hold harmless and indemnify Employee from any and all demands, claims, suits, actions and legal proceedings brought against Employee in Employee's official capacity as agent and employee of City, or for any acts, errors or omissions in Employee's personal capacity arising out of the scope and duration of Employee's employment with City, subject to Government Code Section 825 and as otherwise permitted by law.

D. The City Manager, shall fix any such other terms and conditions of Employee's employment, as the City Manager may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinance, resolution, or law.

E. City shall not at any time during the term of this Agreement reduce salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all management employees of the City.

F. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

G. Employee's duties and obligations under this Agreement are personal and not assignable.

SECTION 8. GENERAL PROVISIONS

A. Notices. Any notice to be given by either party to the other shall be in writing and shall be considered delivered when transmitted whether by personal delivery or by mail, registered or certified, postage pre-paid with return receipt requested and properly addressed as follows:

Employer: Rob Braulik

Employee: Manjit Sappal

City Manager

Chief of Police

City of Martinez

City of Martinez

525 Henrietta Street

525 Henrietta Street

Martinez, CA 94553-2394

Martinez, CA 94553-2394

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

B. Waiver. The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

C. Construction of Terms. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

D. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the parties hereto agree to enter into supplemental or other agreements to effectuate the intent of the parties and the purpose of this Agreement.

E. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of Contra Costa, State of California.

F. Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to the employment of Employee by the City and supersedes all prior and contemporaneous agreements, representations, promises, and understanding of the parties, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by all parties, and this Agreement may not be altered, amended, or modified by any other means. Each party waives their ~~the~~ right

to claim, contend, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppels.

IN WITNESS WHEREOF, the City of Martinez has caused this Agreement to be signed and executed in its behalf by its Mayor, and the Employee has signed and executed this Agreement, on the day and year first written above.

EMPLOYER

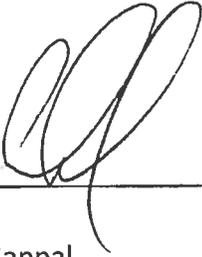
City of Martinez

By: _____

Rob Braulik

City Manager

EMPLOYEE

By:  _____

Manjit Sappal

Approved As To Form:

By: _____

Assistant City Attorney