

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
FROM: AMY REEVE, DIRECTOR OF HUMAN RESOURCES  
HUMAN RESOURCES DEPARTMENT  
SUE GALLAGHER, CITY ATTORNEY  
CITY ATTORNEY'S OFFICE  
SUBJECT: RESOLUTION MAKING REQUIRED FINDINGS AND APPROVING  
THE HIRING OF JEFFREY BERK, RETIRED ANNUITANT, AS A  
TEMPORARY EMPLOYEE TO SERVE AS PART-TIME ACTING  
CHIEF ASSISTANT CITY ATTORNEY FOR A PERIOD OF  
LIMITED DURATION

AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended by the City Attorney's Office and Human Resources Department that the Council, by resolution, approve Jeffrey Berk to be hired as a Temporary Employee to the position of part-time Acting Chief Assistant City Attorney for a limited period from February 21, 2023 through February 20, 2024, or until the permanent full-time position is filled, whichever is sooner, and certify the appointment is necessary to fill the critically needed Chief Assistant City Attorney position.

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EXECUTIVE SUMMARY

Jeffrey Berk retired from his position as Chief Assistant City Attorney as of January 4, 2023. The City is currently conducting an open recruitment for his replacement. It is anticipated that the recruitment could take four to six months. There are critical issues and projects pending which will need to be addressed while the recruitment for a permanent replacement is underway. Mr. Berk has the specialized knowledge and skills to address those critical issues and projects. Existing staff resources are not otherwise sufficient to undertake that work. To ensure a smooth transition and uninterrupted City operations, it is recommended that Mr. Berk return as a Temporary Employee to serve in the position of part-time Acting Chief Assistant City Attorney pursuant to the provisions of Government Code sections 7522.56, 21221(h), and 21224. In particular, Government Code section 21221(h) permits the hiring of a CalPERS retired annuitant to a vacant position while a recruitment for a permanent placement is underway and Government Code section 7522.56 permits the hiring of a CalPERS retired annuitant when specialized skills are needed in performing work of

RESOLUTION FOR APPROVAL OF JEFFREY BERK AS TEMPORARY EMPLOYEE  
TO SERVE AS ACTING CHIEF ASSISTANT CITY ATTORNEY  
PAGE 2 OF 4

limited duration. The appointment will also be made in compliance with the City's Use of City Temporary Employees Policy and Hiring Annuitants Policy.

During his employment as Acting Chief Assistant City Attorney, it is recommended that Mr. Berk receive compensation at the rate of \$101.46 per hour with no other benefit, incentive, compensation in lieu of benefit, or other form of compensation paid

BACKGROUND

Jeffrey Berk retired from the City on January 4, 2023, as Chief Assistant City Attorney. A recruitment for Mr. Berk's replacement is currently ongoing and it is anticipated to take between four to six months to fill the position.

PRIOR CITY COUNCIL REVIEW

None.

ANALYSIS

The Chief Assistant City Attorney is hired by and serves under the direction of the City Attorney. The Chief Assistant City Attorney assists in the management of the department, provides professional legal services to all City departments, to the Council and various Boards and Commissions. The position also provides direction and counsel regarding labor and employment matters and represents the City in administrative and judicial proceedings. The Chief Assistant City Attorney position is critical for the continued operations of the City Attorney's Office.

As has been noted previously, the recruitment and hiring process for this position is likely to take four to six months from the time it is initiated. Government Code section 21221(h) allows the City to appoint a CalPERS retired annuitant to a vacant position during the recruitment for a permanent appointment.

As a CalPERS retired annuitant, Mr. Berk is subject to limitations imposed by Government Code sections 7522.56, 21221(h), 21224 as well as other CalPERS rules and regulations. These limitations include:

- The appointment must be of limited duration.
- The appointment must have a beginning date and an end date.
- The retiree shall not work more than 960 hours each fiscal year for CalPERS employers, except as otherwise provided by Gubernatorial emergency declaration.
- Compensation shall not exceed the maximum monthly base salary paid to other employees performing comparable dues divided by 173.333 to equal an hourly rate.
- The retiree shall not receive any benefit, incentive, compensation in lieu of benefits or other form of compensation in addition to the hourly pay rate.

RESOLUTION FOR APPROVAL OF JEFFREY BERK AS TEMPORARY EMPLOYEE  
TO SERVE AS ACTING CHIEF ASSISTANT CITY ATTORNEY  
PAGE 3 OF 4

In addition, pursuant to Government Code section 7522.56(f)(1), the retiree shall not be eligible to begin work for a period of 180 days following the date of retirement unless the employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position within that initial period. The findings must be made by the employer's governing body as a regular report item in a public meeting.

In the Acting Chief Assistant City Attorney position, Mr. Berk will meet all of the above requirements. He will have a defined term not to exceed one year, beginning February 21, 2023. He will not be permitted to exceed 960 hours in any fiscal year. He will receive compensation at the rate of \$101.46 per hour, equal to the current maximum hourly rate of a Chief Assistant City Attorney as calculated above. The current salary for Chief Assistant City Attorney is \$168,890-\$211,033. No other benefit, incentive, compensation in lieu of benefit, or other form of compensation will be provided.

By this item, staff requests that the Council make the findings required by Government Code section 7522.56(f)(1) to allow Mr. Berk to begin his work as soon as possible.

**A. City Regulations: Appointment as Temporary Employee – Acting Chief Assistant City Attorney**

The City uses Temporary Employees to relieve or augment regular staff on a continuous basis for a period not to exceed six (6) months without a substantial break in service. Examples include, but are not limited to: vacation, pregnancy and disability leave relief, and short term assignments to assist a department with a temporary increase in workload that is too great to be dealt with expeditiously by regular employees of the department. The six month time limit may be extended with the approval of the Director of Human Resources.

Temporary employment is of a limited duration, is at-will and is not governed by the Personnel Rules and Regulations. The employee is not eligible for City benefits, does not hold a City Council budgeted position and is not considered a member of CalPERS, unless the employee works 1000 hours or more in a fiscal year or is a member of CalPERS from prior employment. Further limitations of hours to 960 hours per fiscal year are governed by CalPERS and, as noted above, apply to Mr. Berk as a CalPERS annuitant.

Due to the increased workload that would transfer to the City Attorney during the vacancy, it is recommended that Council authorize the hiring of Mr. Berk as an Temporary Employee in the position of Acting Chief Assistant City Attorney for the period of February 21, 2023 through February 20, 2024.

**FISCAL IMPACT**

The total cost of this resolution will be absorbed within existing appropriations of the FY2022-23 budget and related salary savings during the recruitment process.

RESOLUTION FOR APPROVAL OF JEFFREY BERK AS TEMPORARY EMPLOYEE  
TO SERVE AS ACTING CHIEF ASSISTANT CITY ATTORNEY  
PAGE 4 OF 4

ENVIRONMENTAL IMPACT

The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and no further environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution

PRESENTER

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