



## HUMAN RESOURCES DIVISION

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### CITY COUNCIL STAFF REPORT

Meeting: January 15, 2019

#### Subject

Out of Class Compensation for Interim City Manager Appointment.

#### Recommended Action

1. Adopt Resolution 19-\_\_\_\_ to revise the Appointed (City Manager and City Attorney) Employees' Compensation Program (Attachment A)
2. Approve Out of Class Compensation for Interim City Manager, Timm Borden.

#### Discussion

On June 5, 2018, the Cupertino City Council appointed Amy Chan as Interim City Manager. Ms. Chan began her interim assignment on July 5, 2018. As a retired annuitant, she was limited to working 960 hours in a fiscal year and the maximum hours she was allowed to work was reached on January 4, 2019. Therefore, a new Interim City Manager was required to be appointed.

On December 18, 2018, the City Council met at a Closed Session meeting and took action to unanimously appoint the Director of Public Works, Timm Borden, as Interim City Manager effective January 7, 2019. Mr. Borden will serve in this position until further notice by the City Council. As part of the closed session, the salary for City Manager was decreased to \$265,000 annually, down from \$281,274 (see Attachment B and C for the redlined and clean versions, respectively). The appointment was then publicly announced at a City Council meeting on the same date.

Per the City's Administrative Procedures, Number IV-1, Salary Administration (Attachment D) and the Unrepresented Employees' Compensation Program, Policy No. 1 and No. 18, (Attachment E) Mr. Borden will be compensated at the "Out of Class" capacity. This section of the salary administration procedure states, "An employee may be assigned to work in a higher class when there is a vacant position, either temporary or permanent, or when an employee assumes additional work that would otherwise be performed by consultants which results in a cost savings to the City."

CalPERS (California Pension Employee Retirement System) Assembly Bill (AB) 1487 that became effective on January 1, 2018 added Government Code section 20480 which prohibits an out-of-class appointment by a contracting agency with employees serving a limited term appointment in a vacant position from exceeding 960 hours worked within each fiscal year. This pertains to Classic and New Members (Public Employees' Pension Reform Act). Gov. Code section 20480 of the Public Employees' Retirement Law defines an "out-of-class appointment" to mean an appointment to an upgraded position or higher classification by an employer in a vacant position for a limited duration. A "vacant position" refers to a position that is vacant during recruitment for a permanent appointment. A vacant position does not refer to a position that is temporarily available due to another employee's leave of absence (see Attachment F).

As a member of CalPERS, Interim City Manager, Mr. Borden will be limited working 960 hours per fiscal year in his interim assignment. Mr. Borden will not exceed 960 hours in his out-of-class assignment from January 7, 2019 through June 30, 2019 and beginning July 1, 2019, Mr. Borden may work an additional 960 hours available through June 30, 2020.

Sustainability Impact

None

Fiscal Impact

As part of the Fiscal Year 2018-19 Final Budget, salary and benefits costs for the City Manager position and Director of Public Works were budgeted at \$389,969 and \$311,498 respectively, for a total of \$701,467. The costs thru January 4, 2019 for Ms Chan's term as interim City Manager are estimated at \$130,762. Starting January 7, 2019 and continuing through June 30, 2019, Director Borden will receive salary and retirement contributions of \$22,761 in addition to his current salary and benefits of \$311,498, for a total of \$334,259. Staff estimates savings related to this interim appointment will be at \$236,446 for Fiscal Year 2018-19. Therefore, a budget adjustment for FY 2018-19 is not required.

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Reviewed by: Kristina Alfaro, Director of Administrative Services

Approved for Submission by: Aarti Shrivastava, Assistant City Manager

A. Attachments: Resolution amending the Appointed Employees' Compensation Program

- B. Redlined - Appointed Employees' Compensation Program Exempt Positions – January 7, 2019
- C. Clean Version - Appointed Employees' Compensation Program Exempt Positions – January 7, 2019
- D. Administrative Procedures, Number IV – 1, Salary Administration
- E. Unrepresented Employees' Compensation Program, Policy No. 1 & 18
- F. CalPERS Legislation Circular Letter – 200-021-18, "Out-of-Class Appointment Limitations"