



Midpeninsula Regional
Open Space District

R-18-58
Meeting 18-24
June 13, 2018

AGENDA ITEM 4

AGENDA ITEM

Temporary Appointment of Interim General Counsel for the end of Fiscal Year 2017-18

BOARD PRESIDENT'S RECOMMENDATION

Appoint Gary Baum, Esq., as Interim General Counsel for the period June 17, 2018 through June 30, 2018.

SUMMARY

The Midpeninsula Regional Open Space District's (District) General Manager and General Counsel both retired in December 2017. The Board appointed Assistant General Manager, Ana Ruiz, and Assistant General Counsel, Hilary Stevenson, to temporarily serve in these respective vacant appointee positions, and they have done so since January 1, 2018. The Board has been actively recruiting to fill both of these positions. The appointment of a General Manager is on the Board's June 13, 2018 regular meeting agenda, and the appointment of a General Counsel is anticipated to occur in July 2018.

In late 2017, the California legislature passed Assembly Bill (AB) 1487, which prohibits an employee from receiving temporary upgrade pay for working out-of-class in a vacant position for more than 960 hours in each fiscal year. This new law applies to all California Public Employment Retirement System (CalPERS) contracted agencies, including the District.

To ensure compliance with AB 1487, the Board President recommends appointing Gary Baum, Esq., who is contract counsel to the District, as Interim General Counsel for the period June 17, 2018 through June 30, 2018. (Note that the term "interim" is used here to signify that Mr. Baum is not an employee of the District and not eligible for temporary upgrade pay, or "Acting pay", under the District's Personnel Policies and Procedures). On July 1, 2018, the first date of the District's new fiscal year, assuming that the Board has not yet appointed a new General Counsel to fill the vacant position, Hilary Stevenson would return to the role of Acting General Counsel until the Board appoints a General Counsel.

DISCUSSION

AB 1487, codified as California Government Code section 20480, went into effect on January 1, 2018. The new law limits temporary pay upgrades ("acting pay") for out-of-class service while the employer is actively recruiting to fill a staffing vacancy. Employers may only provide temporary pay upgrades to employees for 960 hours per each fiscal year. In compliance with AB 1487, the Board of Directors already updated the District Classification and Compensation Plan to reflect the updated policy for out-of-class/"acting" pay (R-18-23 and Resolution 18-08).

Under AB 1487, CalPERS now requires employers to track out-of-class hours worked in each vacant position per fiscal year and report these hours to CalPERS annually. The penalty for violating this provision is to pay CalPERS three times the amount of money for the difference between the compensation paid for the out-of-class appointment and the compensation paid and reported to the system for the member's regular position. The penalty applies to the entire period(s) during which the staff member serves in an out-of-class appointment. Penalties paid to CalPERS are not normal contributions or additional contributions, and are not credited to an employer or employee's individual CalPERS account.

The Board President recommends appointing Gary Baum, Esq. to serve as Interim General Counsel while Hilary Stevenson returns to her regular position, Assistant General Counsel, from June 17, 2018 through June 30, 2018. Mr. Baum has served as contract counsel to the District since January 2018 in order to help fill the staffing shortage in the General Counsel's Office stemming from the retirement of General Counsel Sheryl Schaffner at the end of December 2017. Mr. Baum has served as an interim City Attorney to several local cities and is well qualified to continue providing legal services to the District at a fair and reasonable price. The Board authorized the General Manager to enter into an agreement with the Law Offices of Gary Baum on December 6, 2017, which agreement is still in effect (see Attachment 1, R-17-129).

On July 1, 2018, if the Board has not appointed a new General Counsel to fill the vacant position, Hilary Stevenson would serve as Acting General Counsel. In accordance with AB 1487, Stevenson's eligibility for a temporary pay upgrade to serve in the acting role is limited to 960 hours during Fiscal Year 2018-19.

FISCAL IMPACT

Sufficient funds for salaries of an Acting and/or Interim General Counsel were included in the FY 2017-18 and FY 2018-19 budgets. The Board approved funding for the legal services agreement with Gary Baum, Esq., on December 6, 2017, and sufficient funds are available in the FY 2017-18 and FY 2018-19 budgets.

BOARD COMMITTEE REVIEW

There was no Committee review of this action.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Pending Board approval, Gary Baum, Esq., will serve in the Interim General Counsel role from June 17, 2018 through June 30, 2018.

The General Manager or designee will report out-of-class appointments to CalPERS for Fiscal Year 2017-18 as required by Government Code section 20480.

Attachment:

1. R-17-129: Award of Contract for Legal Services

Contact Person:

Jed Cyr, Board President

Prepared by:

Hilary Stevenson, Acting General Counsel



Midpeninsula Regional
Open Space District

R-17-129
Meeting 17-30
December 6, 2017

AGENDA ITEM 2

AGENDA ITEM

Award of Contract for Legal Services

GENERAL MANAGER'S RECOMMENDATIONS

Authorize the General Manager to enter into a contract with Gary Baum, Esq. to provide legal services in an amount not to exceed \$150,000.

SUMMARY

As recently announced, upon the General Counsel's retirement, the District's Assistant General Counsel will serve as Acting General Counsel, leaving the Assistant General Counsel position vacant for approximately seven months. After a review of four proposals to perform the duties of the position on an interim basis, and on recommendation of the current Assistant General Counsel Hilary Stevenson, General Counsel Sheryl Schaffner recommends contracting with Mr. Gary Baum to assist with the workload. He and his firm are highly qualified to fill the position and provide legal services at a fair and reasonable price. Salary savings arising from the General Counsel's retirement will cover the cost of the proposed contract.

DISCUSSION

The District's General Counsel will retire at the end of calendar year 2017. The Board of Directors asked the District's Assistant General Counsel, Hilary Stevenson, to step up and take on the role of Acting General Counsel, pending the completion of a recruitment and selection process to fill the General Counsel position.

The net effect is that the District's internal attorney staffing will be reduced by one-half, from two to one attorney, during this period. To reduce the impact of the staffing gap, staff solicited four proposals from attorneys who are well-qualified to perform legal services on a contract basis. Staff carefully reviewed the proposals and considered the mix of skills, experience, rate structures, and availability to provide Assistant General Counsel level services beginning in January 2018 for approximately seven months. All four proposers have previously served in similar positions throughout the area and their rates range from \$150 to \$285 per hour.

With the concurrence of District General Counsel Sheryl Schaffner regarding this selection, Ms. Stevenson recommends contracting with Mr. Gary Baum. Mr. Baum is highly qualified, having worked in many municipal law offices and completed his distinguished public sector career as City Attorney for the City of Palo Alto. He has the relevant experience in the public sector, including experience with public contracts, real estate transactions, wireless leases, personnel

matters, and principles of public finance. He has served in an interim capacity to numerous small public law offices similar to the District General Counsel's Office over the past several years since his retirement. Mr. Baum offers his services at a fair and reasonable rate, and approaches the opportunity to serve the District and its mission with wholehearted enthusiasm.

Mr. Baum can be available for 16-20 hours per week of work. Mr. Baum has agreed to be available in the Administrative Office twice a week to provide "office hours" in person, to meet with staff and attend other meetings, and would also be available via telephone and email as needed. The vacancy of the General Counsel position creates a salary and benefits savings of \$21,300 per month. Mr. Baum's contract can be funded from these salary savings.

With a concurrent vacancy in the General Manager position beginning in January 2018, the Board has decided that it will recruit a new General Manager before commencing the recruitment for the new General Counsel. The proposed seven-month term is an approximation, intended to cover the period of time needed for the Board to fill these positions. If the office is fully staffed earlier than July, the District can terminate the agreement with Mr. Baum with reasonable notice. If there are changes to this timeline, the General Counsel will return to the Board to obtain additional contract help to fulfill staffing needs.

It is important to recognize that the salary savings fund about half of the hours of service the District is accustomed to receiving from the Assistant General Counsel position, which is fairly typical when obtaining outside counsel services. Assuring the effective operation of the General Counsel's Office while it is partially vacant will also require the cooperation and patience of District staff during this transition period.

FISCAL IMPACT

The Legal Department's FY2017-18 budget includes \$21,300 monthly for salaries and benefits for the General Counsel position, which will be available as salary savings during the vacancy in the General Counsel position, to offset the costs of this contract.

BOARD COMMITTEE REVIEW

The Board Appointee Committee was previously informed of the proposed contract to address the gap in staffing arising from the temporary vacancy in the General Counsel position.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

The award of contract is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Following Board approval, the General Counsel and General Manager will execute a contract with Gary Baum, Esq.

Responsible Department Head:
Sheryl Schaffner, General Counsel

Prepared by:
Hilary Stevenson, Assistant General Counsel