

**CITY OF CORVALLIS
COUNCIL SPECIAL MEETING MINUTES
March 30, 2015**

Mayor Traber read a statement, based upon Oregon law regarding executive sessions. The statement indicated that only representatives of the news media, designated staff, and other Council-designated persons were allowed to attend the executive session. News media representatives were directed not to report on any executive session discussions, except to state the general subject of the discussion, as previously announced. No decisions would be made during the executive session. He reminded Council members and staff that the confidential executive session discussions belong to the Council as a body and should only be disclosed if the Council, as a body, approved disclosure. He suggested that any Council or staff member who may not be able to maintain the Council's confidences should leave the meeting room.

PRESENT: Mayor Traber; Councilors Baker, Beilstein, Brauner, Glassmire, Hann, Hirsch, Hogg, York, Bull (6:32 pm)

Council entered executive session at 6:30 pm under ORS 192.660(2)(a)(employment of a public official).

The Mayor, Councilors, and Human Resources Director Altmann Hughes reviewed a proposed City Manager employment agreement.

Mayor Traber adjourned the executive session at 6:59 pm.

A special meeting of the City Council of the City of Corvallis, Oregon was called to order at 7:00 pm on March 30, 2015 in the Madison Avenue Meeting Room, 500 SW Madison Avenue, Corvallis, Oregon, with Mayor Traber presiding.

I. ROLL CALL

PRESENT: Mayor Traber; Councilors Baker, Beilstein, Brauner, Bull, Glassmire, Hann, Hirsch, Hogg, York

II. UNFINISHED BUSINESS

A. Approval of City Manager employment agreement

Mayor Traber noted the staff report summarizing the recruitment and the proposed City Manager employment contract at Councilors' places (Attachment A).

Councilors York and Hirsch, respectively, moved and seconded to hire Mark Shepard as City Manager effective at 8:00 am on May 1, 2015 and approve the City Manager employment agreement as proposed.

The motion passed unanimously.

Councilors Hirsch and Brauner, respectively, moved and seconded to terminate City Manager Brewer's contract effective at 8:00 am on May 1, 2015, to retroactively change Ms. Brewer's City Manager pay increase from five percent to ten percent beginning August 22, 2014, which was her first day as City Manager *Pro Tem*, and for Ms. Brewer to return to her position as Finance Director.

The motion passed unanimously.

The Mayor and Council thanked Ms. Brewer for her service to the City.

III. ADJOURNMENT

The meeting adjourned at 7:08 pm.

APPROVED:



MAYOR

ATTEST:



CITY RECORDER

***** MEMORANDUM *****

March 30, 2015

TO: MAYOR AND CITY COUNCIL

FROM: MARY BETH ALTMANN HUGHES, HUMAN RESOURCES DIRECTOR

SUBJECT: Employment of a Public Officer

PURPOSE:

Present a draft city manager employment agreement with Mark Shepard for approval as recommended by Mayor Traber.

BACKGROUND

Former City Manager Jim Patterson resigned as of August 22, 2014. Council approved a request for proposal for a City Manager recruitment process on September 2, 2014. Four proposals were received, and on October 20, 2014 Council directed the City to enter into a contract with Waldron as the executive search firm leading recruitment efforts. An extensive process was conducted to obtain position profile information, including interviews with community members, former and in-coming City Councilors, and Department Directors along with a discussion and adoption of the process during City Council meeting on December 15, 2014. A total of 57 applications were received, and on February 17, 2015 Council chose their top five candidates. On March 10, the candidates took a tour of the City and participated in a Community Meet and Greet, held at the Corvallis Benton County Library. On March 11, the candidates were interviewed by three panels: Mayor and Council, Department Directors, Community Stakeholders. During the March 16 Executive Session, the Mayor and Council reviewed the results of the interviews and chose their top candidate. The Council directed the Mayor with the assistance of staff and Waldron, to enter into contract negotiations with Mark Shepard.

DISCUSSION

The employment agreement is attached for reference. Highlights include a base salary of \$150,000, start date of May 1, 2015, 6% deferred compensation, benefits commensurate with other exempt level City staff, reviews set at 6 month and one year threshold and annually thereafter and a 60-day notice period in the event of a resignation.

AGREEMENT

Introduction

This Agreement, made and entered into this _____ day of March, 2015, by and between the City of Corvallis, Oregon, a municipal corporation (hereinafter called "City"), and Mark W. Shepard (hereinafter called "Employee"), an individual who has the education, training, and experience in local government management required for a City Manager, and who, as a member of ICMA, is subject to the ICMA Code of Ethics. Both Parties agree as follows:

Section 1: Term

Term. The appointment of employee to the position of City Manager is effective as of May 1, 2015. This agreement shall be for an indefinite term.

- A. Nothing in the Agreement shall grant the Employee any property rights in his position nor shall it prevent, limit, or otherwise interfere with the right of the City to terminate the serves of the Employee at any time, with or without cause, subject to the provisions of this agreement pertaining to Termination and Severance Pay.
- B. The Employee may resign any time, subject to the requirement that he provide not less than sixty (60) days' written notice to the City.
- C. The Employee agrees, except as specifically authorized by the City Council, to remain in the exclusive employ of the City and not to become employed by any other employer until the effective date of any termination or resignation. The term "employed" shall not be construed to include occasional teaching, writing, or consulting work, which does not interfere with the Employee's ability to effectively discharge his assigned duties. Further, the Employee shall not engage in any outside employment, consulting, or retainer agreement without the prior written consent of the City Council. Such consent shall be at the sole discretion of the City Council. The Employee agrees that any outside business activities shall be performed without the use of any City resources and shall not interfere with the Employee's duties and employment with the City. The Employee further agrees that any outside activity shall be consistent with the requirements of Oregon's government ethics laws, the City Charter, the Corvallis Municipal Code and the City's human resources policies.

Section 2: Duties and Authority

- A. City agrees to employ Employee as City Manager to perform the functions and duties specified in Section 23 of the Corvallis City Charter and by the Municipal Code of the City of Corvallis and to perform other legally permissible and proper duties and functions.

- B. Employee agrees to diligently and loyally perform the functions and duties of a City Manager as specified in Section 23 of the Corvallis City Charter and by the Municipal Code of the City of Corvallis and to perform all other legally permissible and proper duties and functions.
- C. The terms of this Agreement are subject to negotiations as part of the annual performance review process.

Section 3: Compensation

- A. Base Salary: City agrees to pay Employee an annual base salary of \$150,000, payable in installments at the same time that the other management employees of the City are paid.
 - 1. Upon completion of the Local Government Management Certificate Program or an advanced degree in Public or Local Government Management, City agrees to increase Employee's annual base salary by \$5000, payable in the same installments.
- B. Consideration shall be given on an annual basis, as part of the annual performance review process, to increases in compensation.
- C. Effective every July 1st, Employee shall receive an annual cost of living adjustment equivalent, by percentage, to that offered to all other City exempt employees.

Section 4: Health, Disability, and Life Insurance Benefits

- A. City agrees to provide to Employee the same medical insurance plan(s) under the same terms and conditions as is provided for exempt employees.
- B. City agrees to pay the amount of premium due for term life insurance in the amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this Agreement up to a limit of \$450,000. The Employee shall name the beneficiary of the life insurance policy.
- C. City agrees to put into force and to make required premium payments for long-term disability coverage for the Employee, consistent with that provided to all other exempt employees.

Section 5: Vacation and Sick Leave

Employee shall accrue Vacation Leave at the rate of 16.67 hours per month. Employee shall accrue Sick Leave at the rate of 8 hours per month. Employee shall be credited with 24 hours of accrued vacation and 80 hours of accrued sick leave as an incentive to enter into employment with the City. Employee has a scheduled trip out of the country in June 2015, and will be allowed fifteen days unpaid leave to accommodate that schedule, otherwise, scheduling and use of vacation or leave shall be consistent with City policy.

- A. Vacation accrual shall be capped at 240 hours (30 days). Sick leave accrual shall be capped at the limit established for other exempt employees.
- B. Employee shall be entitled to annual cash out of accrued vacation time in an amount equivalent to that established for other exempt employees and as described in the City of Corvallis Employee Handbook.
- C. Other leaves and paid time off shall be consistent with that provided to other exempt employees.
- D. In the event the Employee's employment is terminated involuntarily or voluntarily with the required advance written notice to the City Council, the Employee shall be compensated for all accrued vacation time up to 240 hours.

Section 6: Automobile

During the term of this agreement and in addition to other salary and benefits herein provided, City agrees to reimburse Employee for the use of his personal automobile, for City purposes, at the current I.R.S. Standard Mileage Rate.

Section 7: Retirement

City agrees to enroll the Employee into the Oregon Public Employee Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf, both the City and Employee share.

- A. In addition to the City's payment to PERS, City agrees to contribute an amount equal to 6% of the base salary (\$9000) in deferred compensation payable in monthly installments to the to the City's Section 457 deferred compensation plan; upon 18 months of satisfactory employment, this amount shall increase to 8% of Employee's base salary. Employee may make voluntary contributions to the plan in addition to this benefit, if permitted and allowed by the plan and IRS rules, in addition to this benefit.

Section 8: General Business Expenses

- A. City agrees to pay for professional dues and subscriptions of Employee necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement and for the good of the City. City agrees to pay for continuing education and licensing costs for Employee to maintain his Oregon Professional Engineer status.
- B. City agrees to pay for travel and subsistence expenses for Employee for professional and official travel, meetings, and/or short courses, institutes, and seminars to adequately continue the professional development of Employee and to pursue necessary official functions for City, including, but not limited to, the ICMA Annual Conference, the state league of municipalities,

and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member and consistent with City travel policies and the approved budget.

- C. City recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses in accordance with City policies and the approved budget.
- D. City shall provide a cell phone stipend to Employee, consistent with the policy in place for other exempt employees (currently \$45 per month for full data services).

Section 9: Termination

- A. **Termination for Cause.** Employee shall be deemed to be terminated for cause in any of the following events:
 - 1. If he is convicted of a felony or any Class A Misdemeanor involving dishonesty; or
 - 2. He willfully fails to comply with the lawful direction of the City Council; or
 - 3. He willfully fails to carry out any duty posed upon him by the City Charter.
 - 4. An action or failure to act shall be deemed willful only if, following written notice and a reasonable opportunity to comply, the Employee continues the prohibited conduct or fails to engage in the required conduct.
 - 5. In the event that the Employee is terminated for cause, he shall not be entitled to the severance benefits as set forth herein.
- B. **Events which constitute termination.**

For purposes of this Agreement, termination shall occur when any of the following takes place:

- 1. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- 2. City, citizens, or legislature acts to amend any provisions of the City Charter or Municipal Code pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position that substantially changes the form of government.
- 3. City reduces the base salary, compensation, or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads. This provision exists for the benefit of Employee and may be waived by Employee.
- 4. Employee resigns following an offer to accept resignation, whether formal or informal, by the City as representative of the desire of a majority of the governing body that the Employee resigns (as of the date of the suggestion or offer).

Section 10: Severance

If the Employee is terminated for cause, or if the Employee resigns upon an offer to accept resignation, but would otherwise be terminated for cause, the City is not obligated to pay severance under this section. If the Employee is terminated, not "for cause" the City shall provide a severance payment equal to six months' salary at the current rate of pay until Employee has received a satisfactory evaluation reviewing Employee's first six months of employment as City Manager. Upon receiving a satisfactory evaluation at the completion of Employee's first six months of employment, if Employee is terminated the City shall provide a severance payment equal to nine months' salary at the current rate of pay. Severance shall be paid in a lump sum unless otherwise agreed to by the City and the Employee. Employee shall also be compensated for accrued vacation time up to 240 hours. For a period of six months following termination or until Employee begins full-time employment elsewhere, whichever is sooner, or as otherwise required by law, City shall pay the cost to continue the following benefits:

- A. Employee's current health insurance for the employee and all dependents as provided in Section 4.A., as long as Employee continues to pay any current co-pays for such premiums.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the City, the Employee shall provide a minimum of 60 days' notice, unless the parties agree otherwise.

- A. If Employee fails to provide the minimum notice set out above, Employee shall surrender any accrued vacation or sick leave as liquidated damages to the City.

Section 12: Performance Evaluation

City shall at the first six months of employment, and annually in October thereafter, review the performance of the Employee, subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City and Employee. The process at a minimum shall include the opportunity for both parties to: 1) prepare a written evaluation, 2) meet and discuss the evaluation, and 3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

Section 13: Hours of Work

The Parties recognize that in addition to normal full time office hours, the Employee must devote a great deal of time outside the normal office hours to business for the City. Employee shall be allowed to establish a reasonable work schedule, but is expected to diligently and loyally perform and complete the duties of a City Manager anticipated under this agreement, the Charter and Municipal Code.

Section 14: Indemnification

As required under Federal, State, or local law, City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Employee recognizes that City shall have the right to compromise and, unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit, unless said compromise or settlement is of a personal nature to Employee. Further, City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness, or advisor to the City. Such expense payments shall continue beyond Employee's service to the City as long as litigation is pending. Further, City agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor, or consultant to City regarding pending litigation beyond Employee's service to the City as long as litigation is pending.

Section 15: Bonding

City shall bear the full cost of any fidelity or other bonds required of the Employee.

Section 16: Other Terms and Conditions of Employment

- A. Employee agrees to remain in the exclusive employ of the City and not to become employed or engaged by others until a termination date is effected as hereinafter provided.
- B. The City, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

Section 17: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

1. CITY: City Recorder and Mayor, City of Corvallis, PO Box 1083, Corvallis, OR 97339-1083
2. EMPLOYEE: Mark W. Shepard, 1514 SW Birdie Drive Corvallis, OR 97333. Employee shall notify the City of any change of mailing address.

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

Section 18: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties, by mutual written agreement, may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. Binding Effect. This Agreement shall be binding on the City and the Employee, as well as their heirs, assigns executors, personal representatives, and successors in interest.
- C. Effective Date. This Agreement and the appointment of Employee as City Manager shall become effective on May 1, 2015.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect, as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Signed:

Employee

Mayor
City of Corvallis

Approved as to form:

Attest:

City Attorney

City Recorder, City of Corvallis