

City Council

Adjourned Regular Meeting

Monday, November 4, 2013

10:00 AM

Council Chambers

Including Closed Session



Mayor David J. Lesser
Mayor Pro Tem Amy Howorth
Councilmember Wayne Powell
Councilmember Mark Burton
Councilmember Tony D'Errico

Executive Team

David N. Carmany, City Manager
Quinn Barrow, City Attorney

Robert Espinosa, Fire Chief
Cathy Hanson, Human Resources Director
Eve R. Irvine, Police Chief
Mark Leyman, Parks & Recreation Director

Bruce Moe, Finance Director
Tony Olmos, Public Works Director
Liza Tamura, City Clerk
Richard Thompson, Community
Development Director

MISSION STATEMENT:

The City of Manhattan Beach is dedicated to providing exemplary municipal services, preserving our small beach town character and enhancing the quality of life for our residents, businesses and visitors.

A. CALL MEETING TO ORDER**B. ROLL CALL****C. CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING**

I, Liza Tamura, City Clerk of the City of Manhattan Beach, California, state under penalty of perjury that this notice/agenda was posted on Thursday, October 31, 2013, on the City's Website and on the bulletin boards of City Hall, Joslyn Community Center and Manhattan Heights.

D. PUBLIC COMMENT

3 MINUTES PER PERSON

E. GENERAL BUSINESS

1. Evergreen Clause in City Manager Contract. [13-0582](#)
Consider directing City Attorney to provide notice to the City Manager of non-renewal of evergreen clause in the City Manager's employment agreement.

Attachments: [Employment Contract](#)

F. ANNOUNCEMENT IN OPEN SESSION OF ITEMS TO BE DISCUSSED IN CLOSED SESSION

2. PUBLIC EMPLOYEE DISMISSAL/RELEASE Government Code Section 54957
3. PUBLIC EMPLOYEE APPOINTMENT Government Code Section 54957
Title: Acting/Interim City Manager

G. RECESS INTO CLOSED SESSION**H. RECONVENE INTO OPEN SESSION****I. CLOSED SESSION ANNOUNCEMENT IN OPEN SESSION****J. ADJOURNMENT**

Agenda Date: 11/4/2013

TO:

Honorable Mayor and Members of the City Council

THROUGH:

David N. Carmany, City Manager

FROM:

Laurence S. Wiener, Senior Counsel

SUBJECT:

Evergreen Clause in City Manager Contract.

Consider directing City Attorney to provide notice to the City Manager of non-renewal of evergreen clause in the City Manager's employment agreement.

RECOMMENDATION:

If the City Council wishes to discontinue the evergreen clause in the City Manager's contract, then it is respectfully recommended that the City Council direct the City Attorney to provide notice to the City Manager of non-renewal of that evergreen clause.

FISCAL IMPLICATIONS:

There is no direct fiscal impact from this action. The City Manager's contract currently expires on January 10, 2015. Discontinuing the evergreen clause would prevent the contract from extending past that date without affirmative action by the City Council.

BACKGROUND:

The City Manager's employment agreement provides for an initial three year term beginning on January 10, 2011. That initial term would have expired in approximately two months, on January 9, 2014. However, the agreement also provides that "[U]nless City or Employee gives timely written notice of non-renewal at least 12 months prior to any expiration date, this Agreement will automatically renew for an additional one year term with a new expiration date accordingly established." Thus, because neither the City nor the City Manager issued a notice of non-renewal before January 10, 2013, the contract was automatically extended to January 10, 2015.

Unless the City Council issues a notice of non-renewal on or before January 9, 2014, the contract will automatically extend until January 10, 2016.

DISCUSSION:

Providing the City Manager with a notice of non-renewal of his employment agreement would mean that the termination date of the City Manager's employment agreement would be fixed at January 10, 2015. That date would not be extended unless the City Council takes an affirmative action to extend that date.

CONCLUSION:

It is respectfully recommended that the City Council provide direction as to whether it wishes to provide the City Manager with a notice of non-renewal of his contract.

Attachment:

1. Employment Contract

**EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF MANHATTAN BEACH AND DAVID CARMANY**

RECITALS

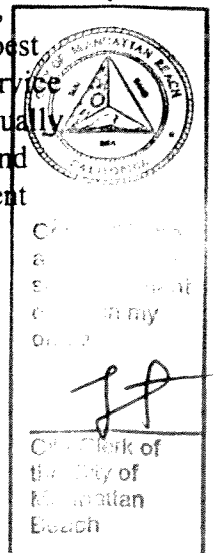
- A. The City of Manhattan Beach ("City") desires to hire a City Manager.
- B. David Carmany ("Employee") represents that he is qualified to perform the duties of City Manager.
- C. City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of the parties.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Employee agree as follows:

1. TERM. Employee shall commence his service on January 10, 2011 which shall also be deemed the effective date of this Agreement ("Effective Date"). Provided, however, this Agreement will not be effective unless and until Employee actually reports for work and assumes the duties of City Manager, with the Effective Date adjusted accordingly. Unless sooner terminated as provided in this Agreement, the initial term of this Agreement shall be for three (3) years from the Effective Date. Unless City or Employee gives timely written notice of non-renewal at least 12 months prior to any expiration date, this Agreement will automatically renew for an additional one year term with a new expiration date accordingly established. However, nothing in the Agreement is intended to prevent employee from resigning with at least 60 days written notice.

2. DUTIES AND AUTHORITY. Employee shall exercise the powers and perform the duties of the position of City Manager as set forth in the Manhattan Beach Municipal Code ("Municipal Code"), the City's personnel rules, regulations and procedures and the City Manager job description, as each of them currently or may in the future exist. At the option of the City, Employee shall serve as Executive Director of or a representative to any other authority or agency created by or staffed by City. Employee shall exercise such other powers and perform such other duties as City, by the City Council, may from time to time assign.

3. EMPLOYEE'S OBLIGATIONS. Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise (together "Outside Employment"), which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to City. Additionally, Employee shall not undertake any Outside Employment except with the consent of the City Council.



4. SALARY AND BENEFITS.

A. Base Salary. City shall pay Employee an annual base salary of \$213,200.00 (Two Hundred Thirteen Thousand Two Hundred and No/100 Dollars). At its sole discretion, the City Council shall consider merit adjustments commensurate with Employee's performance in accordance with the evaluation process pursuant to Section 5 of this Agreement. Employee's salary shall be subject to withholding and other applicable taxes, and shall be payable to Employee at the same time as other employees of City are paid. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

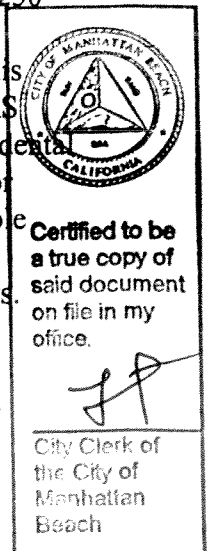
B. Employment Benefits. In addition to base salary, City shall provide to Employee the following benefits:

(1) Holidays. Employee shall be entitled to the holidays listed below, with pay. Employee's salary includes holiday pay. Accordingly, Employee shall not be entitled to any additional salary or compensation for working on a holiday.

- a. New Year's Day,
- b. Martin Luther King Day,
- c. President's Day,
- d. Memorial Day,
- e. Independence Day,
- f. Labor Day,
- g. Columbus Day,
- h. Veteran's Day,
- i. Thanksgiving Day,
- j. Friday following Thanksgiving Day, and
- k. Christmas Day.

(2) General Leave. Employee shall accrue general leave at the rate of 250 hours annually, prorated and credited each pay period. On the Effective Date, Employee shall be advanced eighty (80) hours of general leave so that Employee may take all or any portion of such eighty (80) hours prior to accruing such leave under the terms of this Agreement. When possible, general leave shall be scheduled with the City Council at least two weeks in advance. Employee may accrue general leave not to exceed a limit of 250 hours. Once Employee's accrual reaches the 250 hour limit, all further accruals will cease and Employee will not be eligible for further accruals until his accrued general leave balance falls below the 250 hour limit.

(3) Group Medical, Dental and Vision Insurance. During the term of his employment, Employee and his eligible dependents shall participate in the City's CalPERS group medical program under the Public Employees' Medical and Hospital Care Act and dental and vision insurance plans in accordance with the terms and conditions of such act, plan or program. The City contribution for medical and dental insurance for Employee and eligible dependents will be at the PERSChoice level plus an additional \$70 per month for dental coverage. The vision plan will be fully paid by City for Employee and eligible dependents. Premium contributions will be administered in the manner in effect on the Effective Date.



(4) Life Insurance. Employee will receive City paid life insurance under the City's group policy with a benefit that is 1.5 times annual base salary, subject to a maximum of \$500,000. Medex Travel Assist will be included with the coverage.

(5) Automobile.

a. City shall provide to Employee a monthly automobile allowance of \$400.00. Such amount is designed to reimburse Employee for all costs associated with the use of Employee's automobile for City business, including but not limited to all applicable costs of automobile liability insurance, maintenance, operating expenses, depreciation and interest.

b. Employee shall maintain all records required by applicable California and federal law concerning use of such automobile, including without limitation records to substantiate personal and City-related use of such automobile.

c. Employee currently has an automobile liability insurance policy with \$100,000/300,000/50,000 maximum coverage, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts arising out of the operation of the automobile. Unless otherwise required by the City, Employee will maintain a policy with such coverage and limits throughout the term of this Agreement.

(6) Retirement Plan. Employee shall be covered by the Public Employees' Retirement System plan applicable to current miscellaneous employees of City in accordance with the terms and conditions of that plan as it now exists or as it may be changed from time-to-time in the future. City shall pay 100% of Employee's retirement contribution. In addition, City will provide a retiree medical benefit of \$250.00 per month until Medicare eligibility or age 65. This retiree medical benefit will be provided according to the eligibility, terms and conditions in effect on the Effective Date.

(7) Technology. At no cost to Employee, City shall provide Employee with the use of a City-owned laptop computer and a smart phone (Blackberry, iPhone or equivalent), subject to applicable City policies and procedures. Employee will also be eligible for the City's Computer Loan Program providing 80% of the computer purchase price as an interest free loan with payroll deduction, subject to a \$2,000 limit. The terms of the loan program will be those applicable on the Effective Date.

(8) Long and Short Term Disability Insurance. Employee will receive City paid Long Term Disability coverage under the City's group policy with a plan benefit that pays 60% of salary after a 60 day waiting period. Employee may purchase short term disability coverage under the City's group plan at his own expense, according to the terms, conditions and procedures of that plan.



Certified to be
a true copy of
said document
on file in my
office.


City Clerk of
the City of
Manhattan
Beach

(9) Professional Development. City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred in obtaining continuing education within the state in accordance with the City budget, resolutions and state law, as applicable. Upon prior City Council approval, City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred outside the state. In addition, Employee will be eligible for a tuition and textbook reimbursement benefit not to exceed \$2,500 per year for school attendance, according to the terms applicable generally to employees on the Effective Date.

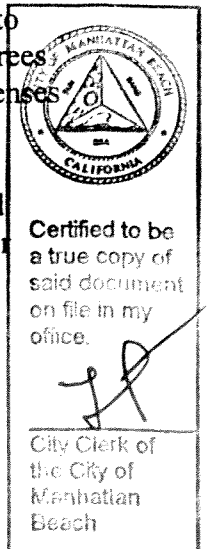
(10) Bonding. City shall bear the full cost of any fidelity or other bonds required of Employee under any law, or City ordinance or resolution by virtue of his employment with the City.

(11) Deferred Compensation Plan. Employee shall be entitled to participate, at Employee's sole expense, in the City's 457 deferred compensation plan in accord with the terms and conditions of that plan. In addition, City will contribute 4.5% of salary to a 401(a) plan in accord with the terms, conditions and procedures of the 401(a) plan document and provisions of the Internal Revenue Code, including related regulations.

(12) Designation of Recipients Pursuant to Government Code Section 53245. Employee may file with the City a designation of a person who, notwithstanding any other provision of law, shall, on the death of Employee, be entitled to receive all warrants or checks that would have been payable to Employee had he survived. Employee may change the designation from time to time. Any person so designated shall claim such warrants or checks from the City. On sufficient proof of identity, the City shall deliver the warrants or checks to the claimant. A person who receives a warrant or check pursuant to this section is entitled to negotiate it as if he or she were the payee.

(13) Additional Benefits. Employee shall be entitled to participate in City's healthcare and/or dependent care expense accounts at his own expense, subject to the applicable terms and conditions. Employee shall also be entitled to use City's on-site fitness center, subject to the City's policies for such use. City will reimburse Employee for the cost of premiums on personal health and welfare, disability and life insurance, auto insurance or similar policies, not to exceed \$1,000.00 per fiscal year.

(14) Moving Allowance. As a result of accepting the position as City Manager with the City of Manhattan Beach, Employee will likely relocate from his current residence to another residence that is in or near the City. In consideration for said relocation, the City agrees to reimburse actual and reasonable moving expenses, not to exceed \$5,000.00. Moving expenses may include professional labor (other than family, relatives and friends), packing services, packing supplies, rented moving equipment, transport and insurance. To be eligible for reimbursement, moving expenses must be incurred within one year of the Effective Date and submitted to City for reimbursement, with reasonable documentation, within six months after being incurred. The City Council, in its sole and absolute discretion, may extend these time limits for circumstances outside of Employee's control.



(15) Housing Assistance. If Employee chooses to purchase property within the City of Manhattan Beach as his primary residence, and the property purchased is valued at no more than \$1.2 million, then City will provide housing assistance to Employee through a joint purchase arrangement and a market rate housing loan from the City, subject to terms negotiated in good faith between the parties.

5. ANNUAL EVALUATIONS. On or before June 30 of each year, the City Council may conduct an evaluation of Employee's performance. During that evaluation, City Council and Employee shall mutually establish performance goals and objectives to be met by Employee during the following year. Employee will request and schedule such reviews, as appropriate, pursuant to City Council agenda procedures or as otherwise directed by City Council. In addition, the City Council may, but is not required to, review Employee's salary and benefits as part of the evaluation process or at any other time. Nothing in this paragraph is intended to limit additional interim evaluations or reviews or to limit the normal communications process between the City Council and Employee.

6. INDEMNIFICATION. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

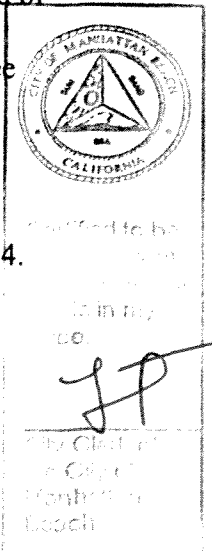
7. AT-WILL EMPLOYMENT RELATIONSHIP. Employee is employed at the pleasure of the City Council, and is thus an at-will employee. The City Council may terminate this Agreement and the employment relationship at any time without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the employment of Employee. City shall pay Employee for all services through the effective date of termination. In addition, Employee shall receive severance to the extent provided in Section 8 and shall receive no other compensation or payment (except for vested benefits).

8. SEVERANCE.

A. If City terminates this Agreement (thereby terminating Employee's employment with City) without cause during the term of this Agreement, City shall:

(1) Pay Employee an amount equal to his then-monthly base salary for a period of twelve months, less interim compensation (as defined below) to which Employee becomes entitled during the twelve-month period following his termination. Employee shall use his best efforts and due diligence to secure employment with, become an independent contractor for, or otherwise provide services for compensation for, any person, organization or entity, other than City; and

(2) Provide at no cost to Employee the insurance benefits provided by Section 4. B (3) herein and the deferred compensation provided by Section 4. B (11) herein for twelve months or until Employee secures other employment, whichever occurs first.



B. Notwithstanding any other provision or the term of this Agreement, the maximum severance and health benefits that Employee may receive under this Agreement as a result of termination, shall not exceed the limitations provided in Government Code §§ 53260–53264.

C. As used in this Agreement, the term “interim compensation” shall include, but not be limited to: compensation, in any form, to which Employee is entitled from employment other than employment with City; compensation, in any form, to which Employee is entitled as an independent contractor; and compensation, in any form, from any source, including, without limitation, unemployment and disability insurance, from any person, entity or source, to which Employee is otherwise entitled. Interim compensation shall not include retirement benefits. Upon City’s request, Employee shall promptly provide City with documentary evidence of interim compensation.

D. Medical and dental insurance benefits under Section 8. (A) (2) will be provided to Employee through reimbursement of COBRA premiums. Deferred compensation under Section 8. (A) (2) will be provided only to the extent permissible under the Internal Revenue Code, including any relevant regulations, and State law.

E. Employee shall not be entitled to severance pay:

- (1) If Employee terminates this Agreement; or
- (2) If City terminates this Agreement for cause for any of the following reasons:

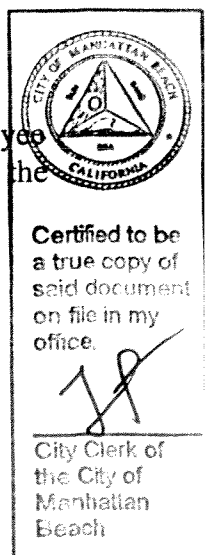
a. Employee refuses or fails to carry out the duties of the City Manager as specified in Section 2 of this Agreement;

b. Employee has engaged in corrupt or willful misconduct in office, including any illegal act involving personal gain;

c. Employee has been convicted of a felony or convicted of a misdemeanor involving moral turpitude. In no event shall a minor traffic offense or moving violation be considered a misdemeanor involving moral turpitude. In the event Employee is terminated while under investigation for any felony or misdemeanor involving moral turpitude, City may withhold part or all of any severance payment, until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered. If charges are not filed, or if Employee is found innocent, City shall pay any severance to which Employee is entitled;

d. Employee breaches this Agreement; or

e. Any other action or inaction by Employee that is detrimental to employee safety or public safety, violates properly established rules or procedures, or adversely affects the reputation of City, its officers or employees.



F. Except as otherwise mutually agreed, any dispute as to whether severance is excused under Section 8, Paragraph E, shall be referred to arbitration before a single neutral arbitrator selected from a list of seven (7) arbitrators requested from the California State Mediation and Conciliation Service. Employer will strike the first name and the parties will alternate striking names until one person is left who shall be designated as the arbitrator. The arbitrator shall determine the rules and procedures to be used for the arbitration with due regard to the rights of the parties. Each party shall initially pay one half the cost of the arbitration. The prevailing party in the arbitration shall be entitled to reasonable attorney fees and that party's costs of arbitration.

9. **INTEGRATION OF AGREEMENT.** This Agreement contains the entire Agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

10. **METHOD OF AMENDMENT.** Amendments to this Agreement are effective only upon City Council and Employee written approval.

11. **NOTICES.** All notices pertaining to this Agreement shall be sent to:

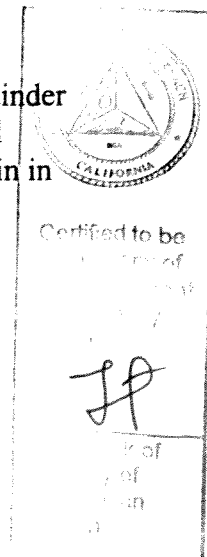
EMPLOYEE: David Carmany
At the most recent address on file in Employee's
personnel file held by City's Human Resources Department

CITY: City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Such notice shall be deemed made when personally delivered, transmitted by facsimile, or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12. **GENERAL PROVISIONS.**

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.



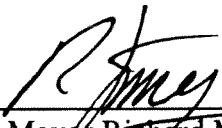
B. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions.

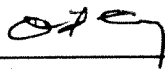
C. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial, tax and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement.

Executed by the parties as of the date below:

CITY OF MANHATTAN BEACH

EMPLOYEE


By: 
Mayor Richard Montgomery


David Carmany

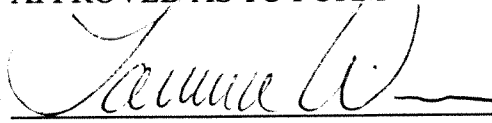
Date: 12/29/10

Date: 1-6-11

ATTEST:

 1-7-11
City Clerk Liza Tamura

APPROVED AS TO FORM


for City Attorney

