

**MAYOR AND COMMISSIONERS MEETING
CITY OF REHOBOTH BEACH**

December 2, 2013

The Special Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 9:02 a.m. by Mayor Samuel R. Cooper on Monday, December 2, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave the Invocation followed by the Pledge of Allegiance.

ROLL CALL

Present:	Commissioner	Toni Sharp
	Commissioner	Patrick Gossett
	Commissioner	Bill Sargent
	Mayor	Samuel R. Cooper
	Commissioner	Stan Mills
	Commissioner	Lorraine Zellers
	Commissioner	Mark Hunker

Also in attendance was: City Solicitor Glenn Mandalas

Absent: City Manager Gregory Ferrese

The purpose of this Special Meeting was to:

- A. Consider adoption of a resolution appointing Ms. Sharon Lynn as City Manager conditioned upon her execution of an employment agreement that forms a part of the resolution.

Mayor Cooper noted that in June 2013, City Manager Gregory Ferrese gave notice to the Commissioners that he would be retiring effective December 5, 2013. The Commissioners began the process of looking for a replacement and hired Novak Consulting Firm to help them. On November 9, 2013, the Commissioners interviewed four potential candidates and arrived at decision to hire Ms. Sharon Lynn. As a result of that meeting, Mayor Cooper was instructed to work with City Solicitor Mandalas to put together a contract for the Commissioners' and Ms. Lynn's consideration. Ms. Lynn has been given a copy of what the Commissioners will be considering today and is in agreement.

City Solicitor Mandalas summarized the "at will" employment agreement. "At will" employment means that the City can terminate the new City Manager for cause or for no cause. Ms. Lynn would also have the opportunity to leave for any reason or for no reason at all. The duties of confidentiality describes that there are certain things the City Manager will learn that are to remain confidential. The City Manager is expected to attend to her duties and responsibilities during the regular work week of the City and to be available during the normal business hours of the City as well as hours outside of normal business hours, including Saturday mornings during the summer season. The City Manager will be expected to attend monthly meetings of the Commissioners. Where appropriate, she may designate a representative to attend other meetings on her behalf that take place outside of normal business hours, subject to the authority of the Commissioners, in their sole discretion, to direct that the City Manager attend a meeting in person. The City Manager is expected to make reasonable efforts, consistent with her normal work responsibilities and duties, to appear in public and at public events, including outside of City Hall, and interact with the citizens of the City. With "at will" employment, a length of a term of employment is not usually set. The City agrees to pay the City Manager, for her services rendered pursuant hereto, an annual salary of \$120,000 minus withholdings as required by law or other deductions authorized by her, payable in installments at the same time as other employees of the City are paid. The City Manager acknowledges that the position of City Manager of the City of Rehoboth Beach is an "exempt" position. The City agrees to adopt a 457(b) defined contribution plan offered by a financial services provider that is mutually agreeable to the City Manager and the City. The City shall, in addition to the base salary in Section 3.1, on an annual basis, contribute \$15,000 to the City Manager's 457(b) account. The City Manager shall accrue 120 hours of vacation annually. After two years of employment, the City shall consider increasing annually accrued vacation to 160 hours. The City Manager shall be credited with 40 hours of vacation upon starting employment with the City. The City Manager shall receive 120 hours of sick leave for the first year of

employment with the City. The City Manager shall receive 120 hours of sick leave for the first year of employment and thereafter receive 80 hours of sick leave per year. The City Manager shall receive paid holidays as established by ordinance for all employees. The City Manager shall be entitled to health, dental and disability insurance under the same terms as they are provided to the City's other full-time employees. The City shall provide the City Manager with life insurance and accidental death and dismemberment insurance in an amount equal to the City's other full-time employees. The City Manager may contribute to the thrift plan made available by the City to its employees, however the City will not contribute to this plan since the City has agreed to contribute to a deferred compensation plan. The City agrees to provide the City Manager a \$300 month allowance for the use of her private vehicle for transportation within the City and for any meeting she is required to attend within 120 miles of the City. The City shall provide the City Manager with a cell phone for use on City business paid for by the City or will provide a monthly allowance for the use of her personal cell phone. The City shall review and evaluate the performance of the City Manager at least once annually which is consistent with other employees. The City Manager shall devote her full time and attention to the City's business and shall not be engaged in any other business activity, whether or not such activity is pursued for profit, without the prior written consent of the City. The City manager shall reside in Sussex County within 10 miles of the City. The City has agreed to pay up to \$5,000 in moving and relocation expenses. There is some allowance for business expense reimbursement which will be considered each year. The agreement calls out participation in the International City/County Management Association. The City shall defend, save harmless and indemnify the City Manager for things that are done in the course of her normal duty. The City shall bear the full cost of any fidelity or other bonds required of the City Manager under the law, or any governing ordinances, or as required by the Commissioners. The City Manager agrees that she is an "at will" employee and is subject to the provisions in the Charter that upon termination, there is a three month severance pay. Upon termination, the City Manager will turn over everything back to the City. This agreement shall be immediately null and void and without further effect upon the death or permanent and total disability of the City Manager. Each party will provide notices in writing of personal service. Delaware law is the governing law for this contract. The City Manager acknowledges the Fair Labor Standards Act. If any provision of this contract is unconstitutional, the rest of the contract remains in full force. Anything that was discussed outside of this agreement that did not get incorporated in this agreement is not part of the relationship between the City and the City Manager. The agreement can be amended in writing and agreed to by both parties. The agreement is binding upon successors. Both parties have an opportunity to consult with counsel when entering into the agreement. The failure of either party to exercise any of its right under this agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach. City Solicitor Mandalas said that Ms. Lynn is anxious for this opportunity and is looking forward to this relationship.

Commissioner Stan Mills read the rationale for the employment agreement. It is the desire of the City to (1) secure the services of City Manager and provide inducement for her to remain in such employment; (2) make possible full work productivity by assuring the City Manager's morale and peace of mind with respect to her job satisfaction; (3) act as a deterrent against misfeasance, malfeasance or dishonesty for personal gain on the part of the City Manager; and (4) provide a just means for terminating the City Manager's services at such time as she may be unable to fully discharge her duties or should the City otherwise desire to terminate her employment. With regard to duties, Commissioner Mills was comfortable that not more specificity was listed, but that it would be assumed there are certain responsibilities, for the City Manager to be onsite for emergency activities, events, etc. Under the term of the City Manager, Commissioner Mills wondered if a recommended minimum notice of 30 or 60 days required by the City Manager when resigning should be included in the agreement. Discussion ensued as to this matter. City Solicitor Mandalas said that the Commissioners should move forward with the agreement and add this matter at a later date, if Ms. Lynn would be amenable to it.

Commissioner Patrick Gossett noted that the official job description is approximately 10 years old and may be something the Commissioners will need to address and update in the near future. Some of the specifics not listed in the agreement may be addressed in the job description. The job description in the advertisement was based on the official job description that was done by the University of Delaware.

Mayor Cooper said that an "at will" agreement was developed because a contract would be contrary to the City's Charter. This agreement was patterned after Lewes' agreement. The City Manager should not set her own schedule.

Commissioner Mark Hunker questioned about actually putting the minimum notice in the agreement because the City would be required to pay one month's salary and severance. Oftentimes, that is why an "at will" agreement is silent on that type of issue.

Commissioner Bill Sargent, Mayor Cooper and Commissioner Lorraine Zellers were hesitant in going back and renegotiating the agreement.

City Solicitor Mandalas read the resolution. No therefore, be it resolved by the Commissioners that the Sharon Lynn be appointed to the position of City Manager. Be it further resolved that the Mayor shall be and is hereby authorized and directed to take any and all actions to execute an Employment Agreement, and to deliver the Employment Agreement to Ms. Sharon Lynn, and to make and accept minor modifications to such Employment Agreement. Be it further resolved that as a condition of employment, Ms. Sharon Lynn shall execute the Employment Agreement. Be it further resolved that after first executing the Employment Agreement, Ms. Sharon Lynn's employment as City Manager shall commence on or about January 6, 2014.

Commissioner Gossett made a motion, seconded by Commissioner Mills, to adopt the Resolution before the Commissioners, appointing Ms. Sharon Lynn as City Manager of the City of Rehoboth Beach.

Commissioner Hunker said that the onus is on the Commissioners to make sure that this choice is made successfully, that the Commissioners take the spirit of this conversation in introducing her to the community; and that the Commissioners live by the expectations and six month and one year goals they have set.

Commissioner Gossett that it is the responsibility of the Commissioners as elected officials to provide the new City Manager with as much direction and guidance as they see fit. It is apparent and important for the Commissioners to provide those guidelines, guidance and mentoring for the new person to be successful in the position.

Commissioner Toni Sharp said that she is ready, willing and able to follow that guidance and consensus that all the Commissioners will be supportive and available.

Mayor Cooper expressed his displeasure that the Commissioners grossly exceeded the figures which were originally laid out with regard to salary. He hoped that this is not an omen for the future with the way this Board spends money.

Commissioner Mills thought that Ms. Lynn is the best fit at this time and he fully supports her.

(Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye, Zellers – aye, Hunker – aye.)
Motion carried unanimously.

- B. Consider adoption of a resolution appointing Mr. Gregory J. Ferrese as acting City Manager starting with the date of his retirement as City Manager and ending upon the commencement of the employment of a new City Manager.

Mayor Cooper said that there is a need for someone to occupy the chair who has the title of City Manager to make decisions in the interim from Mr. Gregory Ferrese's retirement date of December 5, 2013 as City Manager to the start date of the new City Manager. Mr. Ferrese has agreed to stay on approximately three to four days per week and will also be available by telephone for those days he is not in the office. This Resolution is naming Mr. Ferrese as Acting City Manager from December 5, 2013 through to the time when Ms. Lynn will be coming onboard. Mr. Ferrese had noted he only wants to be compensated for the hours he put in at the rate he is making now. Mayor Cooper suggested to the Commissioners to compensate Mr. Ferrese a little more.

City Solicitor Mandalas read the resolution. Be it resolved by the Commissioners that the following individual be appointed Acting City Manager – Gregory J. Ferrese. Be it further resolved that Gregory J. Ferrese's term as Acting City Manager shall commence immediately upon the effective date of this Resolution, and subject to resignation or removal, shall continue until the commencement of the employment of a new City Manager.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to adopt the Resolution appointing Gregory J. Ferrese as Acting City Manager until the new City Manager comes onboard. (Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye, Zellers – aye, Hunker – aye.)
Motion carried unanimously.

There being no further business, Mayor Cooper adjourned the meeting at 9:42 a.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)