

City of Laguna Beach
AGENDA BILL

No. **23**

Meeting Date: 3-28-17

SUBJECT: CITY MANAGER'S COMPENSATION AND EMPLOYMENT AGREEMENT

SUMMARY OF THE MATTER:

During its annual evaluation of the City Manager, the City Council assigned Mayor Pro Tem Boyd and Councilmember Whalen to review Mr. Pietig's employment agreement with the City and recommend any necessary modifications.

The subcommittee has since met and reviewed data from other cities regarding the length of employment agreements. Of the 23 cities that responded to a survey, 11 of them had employment agreements for their City Manager that either automatically renewed or did not have an end date. Most other cities had employment agreements with terms of three to five years that were extended periodically. In recognition of Mr. Pietig's performance and commitment to Laguna Beach, we recommend that the City Council extend the term of his employment agreement from June 30, 2018, to June 30, 2020, and that another year be added to the term of the contract on July 1, 2018, unless the City Council acts prior to that time to not extend the contract.

Full-time city employees are eligible for exceptional performance pay of up to 5% each year. As a result of the City Council's evaluation of Mr. Pietig, we recommend that the City Council provide the City Manager exceptional performance pay of 5%. No other changes to the City Manager's compensation and benefits is recommended, although the City Manager would continue to receive salary adjustments commensurate with those provided to other management employees by the City Council.

The attached document shows the changes recommended to Mr. Pietig's current employment agreement. In addition to modifying the language to reflect the changes mentioned above and cleanup older language, the modifications eliminate a \$4,000 cap on professional dues and conferences to encourage the City Manager to participate in professional activities.

RECOMMENDATION: It is recommended by Mayor Pro Tem Boyd and Councilmember Whalen that the City Council: 1) approve, and authorize the Mayor to execute, amendments to the City Manager's employment agreement to extend the term of the agreement to June 30, 2020, with an additional one year extension to June 30, 2021, effective on July 1, 2018, unless the City Council notifies the City Manager of its intent to not extend the contract prior to that date; and to include the other revisions described in this report; and 2) provide the City Manager with 5% exceptional performance pay for the next year, effective March 27, 2017.

Appropriations Requested: \$ None.

Submitted by: Mayor Pro Tem Boyd &
Councilmember Whalen

Fund: _____

Coordinated with: City Attorney

Attachments: _____

Approved: _____

City Manager

THIRD AMENDED AND RESTATED
CITY MANAGER EMPLOYMENT AGREEMENT

This ~~Third Amended and Restated~~ City Manager Employment Agreement (“Agreement”) is made and entered into by and between the City of Laguna Beach (the “City”), a California general law city, and John Pietig (“Pietig”).

WHEREAS, the City Council of the City of Laguna Beach ~~previously~~ appointed Pietig to the office of City Manager of the City of Laguna Beach, effective December 13, 2010; and

WHEREAS, the City and Pietig ~~made now desire to revise~~ and ~~entered into a “City Manager Employment Agreement” on November 16, 2010 and effective as of December 13, 2010; and~~

~~WHEREAS, supersede the City and Pietig made and entered into an “Third Amended and Restated City Manager Employment Agreement” on March 6, 2012, effective as of that date; and~~

~~WHEREAS, the City and Pietig made and entered into a “Second Amended and Restated City Manager Employment Agreement” on June 19, 2014, effective as of June 3, 2014; and~~

~~WHEREAS, the City and Pietig now desire to amend the “Second Amended and Restated City Manager Employment Agreement” dated February 27, 2015, in accordance with the action approved by the City Council on February 3, 2015 March 28, 2017, and to be effective as of that date;~~

NOW, THEREFORE, it is agreed between the City and Pietig as follows:

1. Duties.

1.1 Pietig shall perform the functions and duties as required by and specified in the laws of the State of California, the City’s Municipal Code, ordinances and resolutions, and to perform such legally permissible and proper duties and functions as the City Council may from time to time assign.

1.2 Pietig shall be the chief executive officer of the City and shall be responsible to the City Council for the proper administration of all affairs of the City.

1.3 Pietig shall perform his duties to the best of his ability and in accordance with the highest professional and ethical standards of the profession.

1.4 Pietig shall comply with all rules and regulations established by the City Council and all applicable laws.

2. Term. This Agreement shall be effective through and including June 30, ~~2018~~2020, and on July 1, 2018, this Agreement shall be deemed extended through and including June 30, 2021, unless terminated earlier as provided by this Agreement, or unless extended by a subsequent writing executed by the parties. The City Council ~~shall notify~~notifies Pietig ~~not~~

~~less than nine (9) months in writing prior to June 30, 2018, or such later expiration date in the event that it intends not to extend the term of this Agreement is hereafter extended, if it is the City Council's intention not to extend the Agreement for an additional period, beyond June 30, 2020.~~

3. Compensation. The City agrees to pay to Pietig as salary and compensation for his services as City Manager, ~~and~~ consistent with changes approved by the City for other City management employees ~~since the Second Amended and Restated City Manager Employment Agreement, as follows:~~

~~(a) Effective the pay period that includes February 1, 2015, Pietig shall receive a five percent (5%) increase in his monthly salary. Therefore, Pietig's current salary in effect at that time, bringing the total annual salary to the sum of Two Hundred Twenty Seven Thousand One Hundred Sixty Five Dollars and 40 Cents (\$227,165.40) per annum.~~

~~(b) Effective the pay period that includes \$251,809 shall be increased by 3% on July 1, 2015, Pietig 2017, and effective July 1, 2018, his salary shall receive a two percent (2%) increase in his monthly salary in effect at that time, bringing the total annual salary to the sum of Two Hundred Thirty One Thousand Seven Hundred Eight Dollars and 70 Cents (\$231,708.70) per annum.~~

~~(c) Effective the pay period that includes January 1, 2016, be further increased by 3%. Pietig shall receive a five percent (5%) increase in his monthly salary in effect at that time, bringing the total annual salary to the sum of Two Hundred Forty Three Thousand Two Hundred Ninety Four Dollars and 14 Cents (\$243,294.14) per annum.~~

also receive such salary and compensation adjustments, if any, hereafter approved by the City Council for general management employees pursuant to the terms of any applicable salary resolution. In addition, Pietig shall receive such exceptional performance pay, if any, hereafter approved by the City Council prior to the expiration date of this Agreement. ~~Pietig shall also receive the same percentage salary increases, if any, hereafter approved by the City and applied to City management employees prior to the expiration date of this Agreement.~~ The salary and compensation payable to Pietig shall be paid in the same manner and at the same time in accordance with the City's established payroll program for the payment of other City employee salaries. The City Manager's salary shall be subject to customary withholding for taxes and other required deductions.

4. Faithful Performance Surety Bond. It is mutually understood and agreed that Pietig will file with the City a faithful performance and surety bond in a principal sum to be determined by the City Council. Said bond shall be paid for by the City.

5. Vacation, Sick Leave, Retirement, Administrative Leave and Insurance Benefits. It is mutually agreed between the parties hereto that Pietig as City Manager shall be entitled to vacation, sick leave, retirement benefits, and any other management benefits in accordance with the City's standard personnel policies. In lieu of any overtime, Pietig shall receive ten (10) days per year of administrative leave. Pietig shall also receive health and insurance benefits in accordance with the City's standard personnel policies. The City agrees to pay to Pietig an

additional allowance in a sum equal to two percent (2%) of his annual salary (see Section 3) as deferred compensation.

5.1 Contribution to Costs of Retirement Benefits. Notwithstanding the foregoing, and consistent with changes approved by the City and applied to other City employees ~~since the Second Amended and Restated City Manager Employment Agreement~~, Pietig shall contribute eight percent (8%) of compensation earnable to the costs of his retirement benefits ~~as follows: Pietig is currently contributing five percent (5%) of compensation earnable, and the City is contributing the remaining required member contribution equal to three percent (3%) of compensation earnable. Effective the first pay period that includes July 1, 2015, Pietig shall contribute the remaining three percent (3%) of compensation earnable, for a total of eight percent (8%), of the required member contribution.~~ In addition, Pietig shall further contribute to the costs of his retirement benefits in such amounts, if any, hereafter approved by the City and applied to City general management employees prior to the expiration date of this Agreement.

6. Automobile Allowance. It is mutually agreed that Pietig will receive an allotment of Five Hundred Dollars (\$500.00) per month for use of his own car for City business. The car allotment may be used for automobile expenses and other business expenses not covered elsewhere in this Agreement.

7. Conferences and Memberships. The City agrees to annually budget and allocate funds ~~in the amount of Four Thousand Dollars (\$4,000.00) as necessary to pay the expenses of Pietig's provide for Pietig's~~ membership in the Orange County City Manager's Association, the International City Management Association, and the California City Managers Foundation, and ~~also~~ the expenses of necessary travel and living expenses to attend professional conferences and meetings reasonably necessary for his professional development.

8. Review of Performance. The City and Pietig each acknowledge that periodic performance evaluations are an important means by which the City Council and the City Manager may ensure effective communications regarding expectations and performance. Toward this end, the City Council shall review and discuss Pietig's performance on an annual basis in or around January of each year. The evaluation shall be in writing unless the City Council and Pietig agree on a different format to facilitate the evaluation. In connection with such review and discussion, the City Council may consider any adjustments in Pietig's duties and compensation.

9. Termination of Employment. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement may be terminated as follows.

9.1 Voluntary Resignation. Pietig may voluntarily resign his position. Before voluntarily resigning his position, Pietig agrees to give the City Council not less than thirty (30) days' advance notice in writing of his intention to resign. Promptly after the effective date of such resignation, the City shall pay to Pietig all salary and benefits amounts both accrued and owing under this Agreement and any other applicable laws, rules, programs or policies. No severance pay shall be due or payable in the event of the voluntary termination of Pietig's employment by his resignation.

9.2 Termination by City Council. Notwithstanding the term provided by this Agreement, the City Council may remove and terminate Pietig in accordance with the following:

(a) Without Cause. The City Manager is an at-will employee serving at the pleasure of the City Council as provided in section 36506 of the Government Code of the State of California. The City Council, at any time during the term of this Agreement, may dismiss or discharge Pietig without cause upon notice delivered in writing. Such termination shall include actual termination, a request that the City Manager resign or the elimination of the City Manager's position. In the event the services of Pietig are so terminated upon the initiative and action of the City Council, the City shall pay to Pietig at the time of such termination severance pay equal to nine (9) months of his then annual salary. Pietig shall also be entitled to receive all benefits amounts both accrued and owing under this Agreement and any other applicable laws, rules, programs or policies.

(b) With Cause. The City Council, at any time during the term of this Agreement, may discharge or dismiss Pietig for cause, which for purposes of this Agreement shall be defined as follows:

(i) That Pietig has some permanent or chronic physical defect that incapacities him for the proper performance of his duties, as determined by a physician designated by the City Council.

(ii) That Pietig has willfully failed to pay just debts or has willfully failed to make reasonable provisions for future payments of just debts, after notice has been given him by the City Council, whereby annoyance is caused the City Council or scandal is caused the City because of such failure.

(iii) That Pietig has been convicted of a criminal offense involving moral turpitude. The word "convicted" shall be construed to mean convicted in any manner referred to in section 689 of the Penal Code of the State of California. The words "moral turpitude" shall be construed to mean any act or baseness, vileness, or depravity, or an act done contrary to justice, honesty, modesty, or good morals, or any act done with deception or through corrupt motives.

(iv) That Pietig, through negligence or willful misconduct, has caused damage to public property (including motor vehicles) or waste of public supplies, or has used public property (including motor vehicles) or supplies for other than a public purpose.

(v) Any other intentional or grossly negligent action or inaction by Pietig that materially and substantially: (A) impedes or disrupts the operations of the City or its organizational units; (B) is detrimental to employee or public safety; or (C) violates properly established rules or procedures of the City causing a material and substantial adverse effect on the City's interests as clearly defined and delineated by properly established City Council action taken by the City Council as a body, policy, regulations or ordinances of the City.

(vi) That Pietig has been willfully and intentionally absent without leave, or has willfully and intentionally failed to report after leave of absence has expired.

(vii) That Pietig has willfully failed or refused to appear in obedience to lawful process or order of the City Council or to answer questions under oath, before the City Council or before a duly authorized committee of Congress of the United States or of the Legislature of the State of California, or a committee or subcommittee of said Congress or Legislature, or before any authorized court, office or tribunal, or before a Grand Jury, on any subject relating to (1) matters connected with the conduct of official business of the City or of any division, department, board or commission thereof, or (2) any of the matters set forth in sections 1028 and 1028.1 of the Government Code of the State of California.

Promptly after the effective date of such involuntary termination, the City shall pay to Pietig all salary and benefits amounts both accrued and owing under this Agreement and any other applicable laws, rules, programs or policies. No severance pay shall be due or payable in the event of such involuntary termination for cause.

10. Other Terms and Conditions of Employment. The City Council may by resolution from time to time fix other terms and conditions of Pietig's employment as the City may determine relating to the performance of his duties as City Manager, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement, the City's Municipal Code, and all applicable laws.

11. Miscellaneous.

11.1 Municipal Code. The provisions of chapter 2.08 of the Laguna Beach Municipal Code relating to the City Manager are incorporated into this Agreement by this reference.

11.2 Business Expenses. The City shall reimburse Pietig for all reasonable City-related business expenses incurred by him in accordance with submittal, processing and payment policies of the City.

11.3 Indemnification; Reimbursement and Forfeiture. The City shall defend, hold harmless and indemnify Pietig against any claim, demand or other legal action arising out of any alleged act or omission occurring in the performance of his duties as the City Manager. The City shall pay the amount of any settlement or judgment thereon, provided that Pietig cooperates in the defense of the claim, demand or action; in this regard, the City shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, the City shall have no duty to indemnify, defend, or hold Pietig harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by him.

Notwithstanding anything in this Agreement to the contrary, the City reserves all rights (including all rights to full monetary reimbursement) provided under section 53243 *et seq.* of the Government Code of the State of California. In the event Pietig is convicted in a court of law of a crime involving an abuse of office or position, Pietig shall reimburse the City for any sums expended investigating and/or defending such wrongdoing as provided under the above-referenced statutes. For purposes of this Agreement, the phrase "abuse of office or position" shall have the same meaning as set forth in section 53243.4 of the Government Code. Further, in

the event Pietig is convicted of any felony under state or federal law for conduct arising out of, or in the performance of, his official duties shall forfeit any contract right or other common law, constitutional or statutory claim against the City to retirement or pension rights or benefits, however those benefits may be characterized, including lost compensation, other than the accrued rights and benefits to which he may be entitled under any public retirement system in which he is a member. Such forfeiture shall be in addition to, and independent of, any forfeiture of public retirement system rights pursuant to sections 7522.70, 7522.72 or 7522.74 of the Government Code.

11.4 Conflict of Interest. Pietig shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, that is in conflict with the proper discharge of his official duties or that would tend to impair the independence of his judgment or action in the performance of his official duties. Pietig shall also be subject to the conflict of interest provisions of the Government Code of the State of California, the City's Municipal Code, and any other conflict of interest regulations applicable to Pietig's employment with the City.

11.5 Notices. Any notice required by this Agreement shall be in writing and shall be either given in person or by first class mail with the postage prepaid, addressed as follows :

To City: Laguna Beach City Council
 City of Laguna Beach
 505 Forest Avenue
 Laguna Beach, California 92651

To Pietig: John Pietig, City Manager
 City of Laguna Beach
 505 Forest Avenue
 Laguna Beach, California 92651

11.6 Arbitration. Any controversy or claim arising out of the interpretation or performance of this Agreement, or otherwise pertaining to this Agreement or Pietig's appointment and service as the City Manager, shall be resolved by binding arbitration in Orange County, California, in accordance with the rules of the Judicial Arbitration and Mediation Services, Inc., or such other arbitration service that the City and Pietig may mutually select; and the arbitration award may be enforced as provided by California law. The City shall be solely responsible for the costs of administration and the costs of the arbitrator.

11.7 Construction and Interpretation. This Agreement shall be construed in accordance with the laws of the State of California and as if drafted jointly by both parties.

11.8 Integration and Amendment. This Agreement represents the entire understanding of the City and Pietig as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. Except as specifically authorized by this Agreement, this Agreement may not be

modified, altered or amended, except in writing approved by the City Council and Pietig, and signed by the Mayor of the City and Pietig.

11.9 Assignment; Personal Contract. This Agreement is not assignable by either the City or Pietig. The City and Pietig acknowledge that this Agreement is ~~thea~~ personal services agreement; for the personal services of the City Manager.

11.10 Severability. In the event that any provision of this Agreement is held or determined to be illegal, invalid or void by reason of any final, non-appealable judgment, order or decision of a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be illegal, invalid or void are wholly inseparable from the remaining portion of the Agreement.

____ IN WITNESS WHEREOF, the parties have caused this ~~Third Amended and Restated~~ City Manager Employment Agreement to be executed in the manner required by law.

Dated this ____ day of ~~February, 2015~~ March 2017.

CITY OF LAGUNA BEACH

____ JOHN PIETIG

By: _____
~~Robert Whalen~~ Toni Iseman, Mayor

By: _____
John Pietig

ATTEST:

Lisette Chel-Walker, City Clerk

APPROVED AS TO FORM:

Philip D. Kohn, City Attorney