



## CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

### AGENDA ITEM

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Report: Findings Pursuant to Government Code section 21221(g) and Ratification of Acting Fire Chief Appointment; Appointment of Retired Annuitant Gregory Fish as Interim Fire Chief pending CalPERS Approval of Reinstatement from Retirement Application

1. Resolution Finding the Position of Fire Chief to be Available Due a Leave of Absence pursuant to Government Code Section 21221(g) and Ratifying the Appointment of Gregory Fish as Acting Fire Chief.
2. Resolution Appointing Retired Annuitant Gregory Fish as Interim Fire Chief pursuant to Government Code Sections 7522.56 and 21221(h) pending CalPERS Approval of Application for Reinstatement from Retirement

### COUNCIL ACTION

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**Item Type:** Action Item

**Approved for** February 27, 2024 **calendar**

### EXECUTIVE SUMMARY

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The City's incumbent Fire Chief has been on administrative leave since October 27, 2023. As the Fire Chief is a position critical to ensure the City's ongoing operation, the City Manager appointed Gregory Fish, a CalPERS retired annuitant, as Acting Fire Chief effective November 1, 2023 pursuant to Government Code section 21224 based on written guidance obtained from CalPERS by the City's special counsel that Government Code section 21221(g) was no longer operative and that Government Code section 21224 applied when a position was vacant as a result of a leave of absence.

CalPERS recently rescinded its previous guidance and took the position that Government Code section 21221(g) was not superseded by Government Code section 7522.56 and that any retired annuitant appointed to a position found to be available due to a leave of absence granted to an incumbent must be made pursuant to Government Code section 21221(g), which requires Council action.

Specifically, the City Council must find that the Fire Chief position became available on October 27, 2023, due to the leave of absence of the incumbent Fire Chief and must further

find that the Fire Chief position requires specialized skills. Out of an abundance of caution, the City Council is also being asked to ratify the City Manager's appointment of Gregory Fish as Acting Fire Chief pursuant to Government Code section 21221(g), effective November 1, 2023. An appointment pursuant to Government Code section 21221(g) must end when the leave of absence terminates, including as a result of a separation from employment.

The incumbent Fire Chief's last day with the City will be February 29, 2024. As such, the Government Code section 21221(g) must also end on February 29, 2024.

On February 13, 2024, the City Manager, with Council approval, appointed Chief Fish to the permanent position of Fire Chief, effective March 1, 2024 or upon CalPERS acceptance of his application for reinstatement, whichever occurs later. As a retired annuitant, Chief Fish is required to apply for reinstatement from retirement prior to becoming the permanent Fire Chief. His application for reinstatement is currently pending approval by CalPERS. In the interim, Chief Fish can only continue as Fire Chief after February 29, 2024 on an interim basis pursuant to Government Code section 21221(h) which requires Council approval. Thus, staff seeks that the Council appoint Chief Fish to the position of Interim Fire Chief pursuant to Government Code section 21221(h) in the event the application for reinstatement is not approved before March 1, 2024.

## **RECOMMENDATION**

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1. Approve the resolution finding the position of Fire Chief to be available due a leave of absence pursuant to Government Code section 21221(g) and ratifying the appointment of Gregory Fish as Acting Fire Chief.
2. Approve retired annuitant Gregory Fish as Interim Fire Chief pending CalPERS' approval of the application for Reinstatement from Retirement

## **ANALYSIS**

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### Ratification of Acting Chief Appointment

Government Code Section 21221(g) permits a contracting agency to employ a CalPERS retired annuitant to a position found by the City Council to be available due to a leave of absence granted to the incumbent and requiring specialized. Such employment will not subject the retired person to reinstatement from retirement or loss of benefits so long as:

- The appointment is limited to one-year.
- Compensation for the appointment is limited to an hourly rate which is not less than the minimum nor more than the maximum hourly rate for the Fire Chief position as identified on the City's Publicly Available Pay Schedule.
- Hours worked in all retired annuitant appointments for Mr. Fish are limited to 960 in a single fiscal year.

Gregory Fish has over 36 years of experience in the fire service, including previously holding the Fire Chief position for the City of Glendale (2015-2018) and the Carpinteria-Summerland Fire District (2015-2018). Thus, Chief Fish has the specialized skills necessary to have performed the duties of acting Fire Chief on a temporary basis while the City's incumbent Fire Chief has been on a leave of absence.

Previous CalPERS guidance indicated that Government Code section 21221(g) was superseded by Government Code section 7522.56 and therefore inoperative. Due to this guidance, the City appointed Mr. Fish to the acting Fire Chief role pursuant to Government Code section 21224, which did not require City Council action.

CalPERS recently rescinded their written guidance, and now takes the position that Government Code section 21221(g) is operative and any retired annuitant appointment made to a position that was made available due to a leave of absence must be made by the Council pursuant to section 21221(g). Because section 21221(g) does not require City Council action to be made prior to the employment start date, the action is being brought forth now, to bring Chief Fish's appointment into compliance. Staff has worked with special counsel to ensure that applicable requirements of section 21221(g) have been met.

#### Interim Chief Appointment

Government Code section 21221(h) permits the City Council to appoint a CalPERS retiree to a position vacant for reasons other than a leave of absence requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours, inclusive of hours worked in other retired annuitant positions with the City or for other CalPERS employers during same period, in a fiscal year. Thus, hours worked during the current 23/24 fiscal year in his acting Fire Chief position pursuant section 21221(g) will be aggregated with hours worked in the interim Fire Chief position pursuant to section 21221(h) through the remainder of the current fiscal year for purposes of the 960 hour limit.

Such an appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as:

- The City commences the recruitment process to appoint a permanent Fire Chief no later than the effective date of the section 21221(h) appointment,
- Chief Fish is only appointed to this vacant position once, ending when the City has made a permanent appointment to Fire Chief,
- Compensation for the appointment does not include incentives or benefits, and is limited to an hourly rate which is not more than the maximum nor less than the

minimum hourly equivalent available for the Fire Chief position as identified on the City's Publicly Available Pay Schedule,

- Hours worked in all retired annuitant appointments for Chief Fish are limited to 960 in a single fiscal year,
- Chief Fish has not received worker's compensation payments from the City in the 12 months preceding the appointment start date, and
- Chief Fish is of normal retirement age, and has been retired for more than 180 days before the appointment start date.

As stated above, Chief Fish has over 36 years of experience in the fire service, including previously holding the Fire Chief positions for the City of Glendale and Carpinteria-Summerland Fire District. Thus, he has the specialized skills necessary to perform the duties of Fire Chief on an interim basis. The recruitment for the appointment of the permanent Fire Chief has commenced and is concluded, resulting in Chief Fish's appointment pending PERS' approval of his reinstatement.

Separate resolutions complying with the requirements of section 21221(g) for a Council finding that the Fire position is vacant due to a leave of absence and approving Interim Fire Chief appointments are included with the agenda packet on this item.

#### **STAKEHOLDERS/OUTREACH**

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N/A.

#### **FISCAL IMPACT**

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There is no fiscal impact associated with this report.

#### **ENVIRONMENTAL REVIEW (CEQA/NEPA)**

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This matter is exempt under the common sense exemption of CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that there is no possibility that the acting and interim appointments will not have a significant effect on the environment.

#### **CAMPAIGN DISCLOSURE**

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This item is exempt from campaign disclosure requirements.

#### **ALTERNATIVES TO STAFF RECOMMENDATION**

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1. The Council could choose not to approve the resolutions. Failure to approve the resolutions will make the City out of compliance with PERS law.
2. The Council can choose an action not identified by staff.

#### **ADMINISTRATIVE ACTION**

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**Submitted by:**

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**Prepared by:**

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**Approved by:**

Roubik R. Golanian, P.E., City Manager

**EXHIBITS/ATTACHMENTS**

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