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OFFICE OF THE CITY CLERK  
OAKLAND

2014 MAY 30 AM 8:39

# AGENDA REPORT

**TO:** FRED GLOVER-BLACKWELL  
CITY ADMINISTRATOR

**FROM:** Donna Hom, Interim  
Assistant City Administrator

**SUBJECT:** Supplemental Report to Amend the  
Salary Rate for Henry Gardner's  
Employment Agreement

**DATE:** May 29, 2014

City Administrator  
Approval

Date 5-29-14

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends that the City Council approve the agenda report and two resolutions:

- 1) A Resolution Confirming the Mayor's Appointment of Henry Gardner as Interim City Administrator for the period June 16, 2014 through January 20, 2015; and,
- 2) A Resolution Authorizing the Mayor to Execute an Employment Agreement on Behalf of the City with Henry Gardner, Interim City Administrator, effective June 16, with the monthly salary rate of \$23,205.00 plus in lieu of medical, dental, and vision plans in the amount of \$1,619.45 and a monthly auto allowance of \$750.00, for a total annual compensation of \$306,893.40; and Effective July 1, 2014 through January 20, 2015, a 1% Cost of Living Adjustment ("COLA") will apply to the salary rate, which provides a revised annual compensation of \$309,678.00.

## REASON FOR SUPPLEMENTAL

In the supplemental report submitted to the Finance and Management Committee on May 27, 2014 in the eighth line of the Recommendation section there was a typographical error in the effective date/period for Mr. Gardner's tenure as Interim City Administrator. The corrected date/period should read "Effective July 1, 2014 through January 20, 2015", instead of "Effective July 1, 2014 through January 20, 2014".

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Furthermore, during the May 27, 2014 Finance and management Committee meeting the Committee discussed two potential amendments to the Employment Agreement for Mr. Henry Gardner.

1. Will designating the City Administrator as "Interim" affect his/her ability to exercise the powers the Charter grants to that office?

No. The designation as "interim" City Administrator will not affect the City Administrator's ability to exercise the City Administrator's charter—mandated powers and duties. The Committee asked whether removing the "interim" designation is an option to eliminate the necessity of resolutions such as the resolution the Council approved a few weeks ago to comply with the California Housing and Community Development's Emergency Housing and Assistance Program's ("EHAP") grant signing requirements. EHAP has an unusual requirement that the Council's resolution designate by name, the persons who are authorized to sign grant documents; therefore, the Council resolution had to reference Fred Blackwell or Henry Gardner by name as authorized signatories. The prior resolution named former City Administrator Deanna Santana. Whether the authorized officer is designated as "interim" or "permanent" is not a factor that EHAP considers. We are not aware of any other state or federal agency that considers whether the officer signing funding agreements is "interim" or "permanent".

In addition, Mr. Gardner has advised that he wants to be designated as an Interim City Administrator.

Should the resolutions be amended to provide that the contract term is "from June 16, 2014 until **at least** January 20, 2015"?

No. Mr. Gardner is a CalPERS retiree ("annuitant"). The contract term is based on the 960 hour-maximum per fiscal year that CalPERS statutes allow annuitants to work for the City and continue to receive their retirement pensions. The contract provides that Mr. Gardner is responsible for any costs associated with failure to comply with CalPERS' statutes unless the City is at fault. The contract term therefore should remain as stated in the contract. If CalPERS authorizes a longer period and Mr. Gardner is amenable to that longer term, the Council can pass a resolution extending the employment contract. Alternatively, if Council is comfortable with authorizing the Mayor to extend the contract term without returning to Council, the contract language could be amended to read as follows:

This Employment Agreement shall be for the term commencing on June 16, 2014 and ending at midnight on January 20, 2015, provided that the Mayor may extend the term of this Agreement for such additional period that CalPERS authorizes and Gardner accepts. ("Term").

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The following alternative language could be incorporated into the resolutions if the Council desires to grant the Mayor authority to extend the Agreement for such period as CalPERS authorizes

**FURTHER RESOLVED:** that the Mayor hereby is authorized to extend the term of the Agreement for such additional period that CalPERS authorizes.

For questions regarding this report, please contact Deborah Barnes, Manager, Contracts and Compliance Division at (510) 238-6270.

Respectfully submitted,



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Donna Hom  
Interim Assistant City Administrator

Reviewed by:  
Deborah Barnes, Manager  
Contracts and Compliance

Prepared by:  
Mary Mayberry, ASMI  
Contracts and Compliance

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**DRAFT**

City Attorney's Office

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**REVISED**  
5-29-14

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY HONORABLE MAYOR JEAN QUAN

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT ON BEHALF OF THE CITY WITH HENRY GARDNER, INTERIM CITY ADMINISTRATOR, EFFECTIVE JUNE 16, 2014 THROUGH JANUARY 20, 2015

**WHEREAS**, pursuant to Article III Section 305(e) of the Oakland City Charter, Mayor Quan appointed Mr. Henry Gardner as the Interim City Administrator for the period of June 16, 2014 through January 20, 2015, subject to confirmation by the City Council, and the City Council has approved a resolution confirming the appointment; and

**WHEREAS**, the City desires to compensate Mr. Gardner at a level commensurate with his expertise, education and qualifications; and

**WHEREAS**, pursuant to Article IV, Section 400 of the Charter of the City of Oakland, the Council desires to enter into a contract setting forth the terms and conditions, of the employment of Mr. Gardner as Interim City Administrator of the City of Oakland; and

**WHEREAS**, Mr. Gardner's monthly compensation equal to \$23,205.00 plus pay in lieu of medical, dental and vision plans in the amount of \$1,619.45 and monthly auto allowance of \$750.00, which will provide for annual compensation equal to \$306,893.40 or a monthly payment of \$25,574.45 effective June 16, 2014; and

**WHEREAS**, Mr. Gardner will be entitled to receive the one percent cost of living increase effective July 1, 2014, which will provide for annual compensation equal to \$309,678 or a payment of \$25,806.50 on a monthly basis; and

**WHEREAS**, the annual compensation for Mr. Gardner, \$309,678 will yield a saving of \$154,669 for a budgeted City Administrator position due to no payments to pension and no accrued leaves; and

**WHEREAS**, Mr. Gardner is a CalPERS retiree ("annuitant"), and therefore subject to the 960 hour-maximum that CalPERS status allow annuitants to work for the City and continue to receive their retirement pensions; now therefore be it

**RESOLVED**: That the Mayor is hereby authorized to execute an employment agreement with Mr. Henry Gardner for the term of June 16, 2014 through January 20, 2015 that has an annual cost of \$306,893.40, which includes a monthly salary of

\$23,205.00 plus pay in lieu of medical, dental and vision plans in the amount of \$1,619.45 and a monthly auto allowance of \$750.00; and be it

**FURTHER RESOLVED:** Mr. Gardner will be entitled to receive the one percent cost of living increase effective July 1, 2014, which will provide for annual compensation equal to \$309,678 or a payment of \$25,806.50 on a monthly basis; and be it

**FURTHER RESOLVED:** That funding for contract will be drawn from the vacant budgeted City Administrator position and a projected annual saving is \$154,669; and be it

**FURTHER RESOLVED:** That the agreement(s) and other actions authorized hereunder shall be reviewed and approved by the Office of the City Attorney for form and legality prior to execution and filed with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID,  
SCHAAF AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the