

**MEETING MINUTES
TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Friday, January 8, 2021
4:00 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 4:02 p.m. Also present were Vice Mayor Alfred “Buz” Oldaker, Commissioner Edmund Malkoon, Commissioner Elliot Sokolow, Commissioner Randy Strauss, Assistant to the Town Manager Neysa Herrera, Town Attorney Susan Trevarthen, Finance Director Lucila Lang, Public Works Director Ken Rubach, Development Services Director Linda Connors, Special Projects Coordinator Debbie Hime, Public Information Officer/IT Administrator Steve d’Oliveira, and Town Clerk Tedra Allen.

2. DISCUSSION ITEM

2.a Discussion of the Town Manager and Acting Town Manager Resolution 2021-01 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPOINTING AN ACTING TOWN MANAGER TO SERVE IN THE EVENT THE TOWN MANAGER IS ABSENT OR DISABLED; APPOINTING ALTERNATES TO SERVE AS ACTING TOWN MANAGER TO SERVE IN THE EVENT THE ACTING TOWN MANAGER IS ABSENT OR DISABLED; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

Mayor Vincent explained that the special meeting was called to ensure that an Acting Town Manager is appointed before the following week, as both Town Manager Bill Vance and Acting Town Manager/Public Works Director Ken Rubach will be unavailable at that time. The Town will also need to establish a succession plan to clarify the individual(s) who may act as Town Manager.

Town Clerk Tedra Allen read the following public comment:

- Barbara Cole, resident, recalled that it was suggested some time ago that an Assistant Town Manager be appointed, and recommended that this issue be placed on a Town Commission Agenda as soon as possible

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Town Attorney Susan Trevarthen advised that the Commission will not vote at tonight's meeting to change the Town's organizational chart by permanently creating an Assistant Town Manager position. The Resolution before the Commission tonight reaches back to the pre-2019 format in which multiple alternates are proposed, beginning with the Public Works Director and followed by the Development Services Director and Finance Director. If Resolution 2021-01 is approved, this structure would remain in place indefinitely until it is revisited.

Town Attorney Trevarthen continued that Resolution 2021-01 was prepared with this line of succession in mind, based upon the recommendation from current Acting Town Manager Ken Rubach.

Town Attorney Trevarthen read from Provision 5.6 of the Town Manager's contract, which refers to "a temporary absence from the Town which does not invoke 5.4 of the Town Charter." It also states that the Town Manager shall provide prior notice if s/he anticipates being away for more than two consecutive business days. The contract specifically refers to a period that does not invoke the Charter provision requiring the Acting Town Manager to serve in the absence of the Town Manager.

The Commission agreed by consensus to proceed with Resolution 2021-01, with Commissioner Sokolow stating that the Commission should discuss the line of succession in greater detail at a future meeting. Town Attorney Trevarthen advised that the proposed resolution establishes the three members of the line of succession for the Town Manager and will not change again unless the resolution is revisited.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to approve the following line of succession for the Acting Town Manager: Ken Rubach, Linda Connors, and Lucila Lang. Motion carried 5-0.

Mayor Vincent continued that he would also like to discuss the status of the Town Manager's contract. Town Attorney Trevarthen explained that the Town Manager's contract establishes a deadline by which the Commission must decide whether or not to extend it into the future.

The current contract was approved in early 2019 for a three-year term, with March 1 established as the anniversary date. At the end of year two, March 1, 2021, there is a

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deadline by which the Commission must decide whether or not to extend the contract. The following options are available:

- Vote to extend the contract by adding years or amending the terms of the agreement
- Vote not to extend the contract, which would then end on March 1, 2022 with no severance or additional decisions to make
- Make no decision, which would occur if the Commission does not take action before March 1, and allow the contract to end on March 1, 2022

Other relevant provisions of the contract include:

- Termination with cause, which is referred to in the agreement as “termination with misconduct;” the Commission may also terminate without cause, which would result in severance payment
- Voluntary resignation by the Town Manager with written notice, which would forfeit any claim to severance pay
- Performance review, which was most recently conducted in February 2020 and has not yet been scheduled for 2021; in this case, the Town Manager and Commission work together to establish and prioritize goals

Town Attorney Trevarthen further clarified that “misconduct” in this case refers to statutory principles and provisions. This would not stem from a minor disagreement, but would require a breach of contract or willful failure to conform to or violate a statutory code of ethics. Failure to meet performance objectives would not be classified as misconduct.

Mayor Vincent recalled a conversation with Town Manager Vance in late 2020 in which the Town Manager wished to place early extension of his contract on an upcoming Commission Agenda. The Town Manager also indicated that he was making similar proposals to other members of the Commission. He later asked the Town Attorney to communicate to the Mayor a number of changes to his contract, including raises and extensions. Mayor Vincent had expressed concern with both the proposed changes to the contract as well as the possibility of making a decision on extension prior to the Town Manager’s performance review.

Mayor Vincent continued that he has had other concerns with the Town Manager’s performance, some of which are reflected in the written performance review of February 2020. These included the following concerns:

- Deficiencies in communication with the Commission
- Failure to provide information or viable alternatives to recommendations

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- Inadequate budget preparation and loss control
- Tendency to respond too quickly to sensitive issues without a full understanding of them
- Erratic management that has interfered with Staff's ability to perform their duties

Mayor Vincent stated that since February 2020, he has continued to have challenges in working with the Town Manager, including the exercise and implementation of the Mayor's emergency powers during the COVID-19 pandemic. He also felt the Town Manager has been insubordinate on a number of issues, some of which affected the Mayor's relationships with Town Staff, the community, and other organizations.

In light of these issues, Mayor Vincent felt the Town should discontinue the employee/employer relationship with the Town Manager. The Town Attorney has reviewed and summarized the available options for accomplishing that outcome.

Mayor Vincent concluded that he has considered the financial component of termination without cause, which would allow the two parties to part ways. Based on these considerations, he recommended that the Town terminate the Town Manager without cause, make the required severance payment, and move forward with the process of recruiting a new Town Manager.

The Commission discussed the Mayor's recommendation, with Commissioner Malkoon noting that Town Staff has done a creditable job of carrying out their responsibilities without significant leadership from the Town Manager. He agreed with Mayor Vincent that termination without cause was the best recourse.

Vice Mayor Oldaker stated that he was supportive of the Mayor's recommendation as well, recalling that he had disagreed with the Town Manager regarding the presentation of economic issues and policies to the Commission. He noted that there were a number of incidents which had caused him concern during the Town Manager's tenure.

Commissioner Strauss commented that he would appreciate additional time for greater reflection on and consideration of this issue, and requested that any vote be postponed until the next Commission meeting on Tuesday, January 12, 2021, if possible.

Commissioner Sokolow stated that while he has been disappointed by the Town Manager at times, he was not certain that termination without cause was the best possible action. He also requested additional time to reflect on this issue.

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Town Attorney Trevarthen advised that the Town Manager's contract specifies what happens if a motion to terminate without cause is made and approved. This includes a clause stating that any payout based upon the Town Manager's separation will be calculated by the Finance Director and presented to the Mayor and Commission for review and a vote at a subsequent meeting. It would then be paid to the Town Manager within 30 days of his separation.

Vice Mayor Oldaker made a motion, seconded by Commissioner Malkoon, to terminate [the Town Manager] without cause, with severance to be calculated according to procedure, effective immediately. Motion carried 4-1 (Commissioner Sokolow dissenting).

Mayor Vincent noted that the position of Interim Town Manager may require changes to the order of succession previously voted upon at tonight's meeting. He observed that Development Services Director Linda Connors would be well-positioned to assume the role of Interim Town Manager due to the longevity of her service to the Town. He recommended that succession for this position be followed by Ken Rubach and Lucila Lang respectively.

Town Attorney Trevarthen explained that the Commission would need to reconsider their adoption of Resolution 2021-01 in order to invoke a different order of succession. She noted that while the Charter specifically refers to an Acting Town Manager, this position is more limited and temporary than the position of Interim Town Manager.

Development Services Director Linda Connors confirmed that she would be willing to assist the Town in the capacity of Interim Town Manager.

Town Attorney Trevarthen clarified that the Commission may move to reconsider their previous decision on Resolution 2021-01, or Staff may bring forward a different Resolution in the future if that is the Commission's preference.

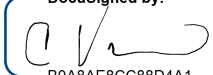
Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to reconsider Resolution 2021-01. Motion carried 5-0.

Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to change the Resolution [2021-01] to name Linda Connors as Interim Town Manager, with Ken Rubach and Lucila Lang in succession as Acting Town Manager until a new permanent Town Manager is hired. Motion carried 5-0.

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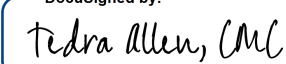
3. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 5:15 p.m.

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Mayor Chris Vincent

ATTEST:

DocuSigned by:

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Town Clerk Tedra Allen

1/27/2021

Date