



**CITY OF PALO ALTO
CITY COUNCIL
Special Meeting
Monday, February 12, 2024
Council Chambers & Hybrid
5:30 PM**

Agenda Item

12. Adoption of a Resolution Certifying the Need for an Exception to the California Public Employees Retirement System (CalPERS) 180-day Waiting Period to Hire Matthew Raschke as a Retired Annuitant Extra Help Senior Engineer. CEQA status - Not a Project



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Human Resources

Meeting Date: February 12, 2024

Report #:2401-2521

TITLE

Adoption of a Resolution Certifying the Need for an Exception to the California Public Employees Retirement System (CalPERS) 180-day Waiting Period to Hire Matthew Raschke as a Retired Annuitant Extra Help Senior Engineer. CEQA status - Not a Project

RECOMMENDATION

Staff recommends that the City Council adopt a resolution certifying the need for an exception to the 180-day waiting period, set forth by CalPERS, to hire Matthew Raschke as a Retired Annuitant Extra Help Senior Engineer.

BACKGROUND

The Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires retired annuitants to be separated from employment for at least 180 days before returning to work for an employer in the same retirement system from which they receive a pension.¹ An exception to this requirement may be made when the employer's governing body certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed.² The exception allows an employer to hire a retired annuitant to perform work of limited duration, such as to eliminate a backlog, work on limited term special projects, and perform work that is in excess of what regular staff can reasonably perform. PEPRA states that this appointment must be approved by the employer's governing body in a public meeting as an action item. To secure a 180-day wait period exception, the employer must submit the approved resolution to CalPERS before the first day of re-employment.

ANALYSIS

The Public Works Department has been managing the design and construction of the Public Safety Building as part of the 2014 Council Infrastructure Plan.³ The Public Safety Building's

¹ Government Code section 7522.56 (f).

² Government Code section 7522.56 (f)(1).

³ <https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Engineering-Projects/Public-Safety-Building-Project>

construction is approximately 90% complete, but there are still many important tasks left to do, including commissioning, move-in, and fit-up of all the technical equipment and furniture. The senior engineer serving as project manager manages most of this work, which is conducted by and through contractors. The project manager also performs special coordination with the prime contractor.

Matthew Raschke served as the project manager for the Public Safety Building for over nine years. He gained detailed knowledge of the building's design and has built positive working relationships with the Public Safety Building's project design team and construction teams.

The Public Works Department requires the skills and experience of Matthew Raschke to complete special project work related to the Public Safety Building. Due to Raschke's specialized knowledge of the Public Safety Building construction project, employing Matthew Raschke as a retired annuitant is the most effective option for completing construction-related work at this critical point.

Matthew Raschke has extensive knowledge of the Public Safety Building's construction activities to date and will be highly advantageous to participate in processing construction change order requests and other tasks as part of the project close-out. If City Council adopts the recommended resolution, Matthew Raschke can be rehired in March 2024. The Public Safety Building construction project is set to be completed later this spring. However, close-out of the project may take an additional six to nine months. Staff expects to need Matthew Raschke to work part-time through the close-out of the project.

FISCAL/RESOURCE IMPACT

The cost of this retired annuitant hourly position will be funded by vacancy savings from vacant positions, including the employee's previous full-time position, that are budgeted in the Capital Fund to work on capital projects such as the Public Safety Building Project (PE-15001). The Public Works Department will ensure vacancy savings are available in the Capital Fund to fund the cost of the hourly position for six to nine months while the Public Safety Building Project is completed.

STAKEHOLDER ENGAGEMENT

Staff in Human Resources and the Public Works Departments coordinated on the resolution to re-hire a highly knowledgeable retiree annuitant in compliance with CalPERS Public Employment Retirement Law. The employment agreement between Matthew Raschke and the City of Palo Alto is attached herein.

ENVIRONMENTAL REVIEW

Council approval of the resolution is exempt from California Environmental Quality Act (CEQA) because it can be seen with certainty that approving the resolution will not result in any environmental impacts.

ATTACHMENTS

Attachment A: Resolution No. 10147: A Resolution of the City Council for the City of Palo Alto Approving an Exception to the California Public Employees Retirement System 180-day Waiting Period to Hire Retired Annuitant Matthew Raschke

Attachment B: Employment Agreement – Raschke 2024

APPROVED BY: Sandra Blanch, Human Resources Director

Resolution No. 10147

A Resolution of the City Council for the City of Palo Alto Approving an Exception to the California Public Employees Retirement System 180-day Waiting Period to Hire Retired Annuitant Matthew Raschke

R E C I T A L S

A. In compliance with Government (Gov.) Code section 7522.56 of the Public Employees' Retirement Law, the City of Palo Alto must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

B. Matthew Raschke (CalPERS ID 3118008844) retired from City of Palo Alto in the position of Senior Engineer, effective January 13, 2024; and

C. Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is July 12, 2024 without this certification resolution; and

D. Gov. Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

E. The City Council of the City of Palo Alto, the City of Palo Alto and Matthew Raschke certify that Matthew Raschke has not and will not receive a Golden Handshake or any other retirement-related incentive; and

F. The City Council hereby appoints Matthew Raschke as an extra help retired annuitant to perform the duties of the Retired Annuitant Extra Help Senior Engineer for the City of Palo Alto under Gov. Code section 21224, effective March 25, 2024, or upon approval from CalPERS to hire, whichever is later; and

G. The entire employment agreement, contract or appointment document between Matthew Raschke and the City of Palo Alto has been reviewed by this body and is attached herein; and

H. No matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

I. The employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

J. The compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

K. The maximum base salary for this position is \$107.20 per hour, and the minimum base salary for this position is \$71.47 per hour; and

L. The hourly rate paid to Matthew Raschke will be \$107.20; and

M. Matthew Raschke has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

The Council of the City of Palo Alto RESOLVES as follows:

Section 1. The City Council hereby certifies the nature of the appointment of Matthew Raschke as described herein and detailed in the attached employment agreement document and that this appointment is necessary to fill the critically needed position of Senior Engineer for the City of Palo Alto by March 25, 2024 because of the critical need to complete the Public Safety Building project, a long-term, complex project that requires special expertise and experience to complete.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

**EMPLOYMENT AGREEMENT
BETWEEN CITY OF PALO ALTO
AND
Matthew Raschke**

THIS AGREEMENT is between the City of Palo Alto, a municipal corporation and chartered city ("City") and **Matthew Raschke ("Raschke")**. It is effective on the latest date next to the signatures on the last page.

This Agreement is entered into on the basis of the following facts:

- A. City, acting by and through its City Council, wishes to employ Raschke as a Retired Annuitant, subject to the terms and conditions set forth in this Agreement, Resolution Number 10147 the Palo Alto Municipal Code and the Charter of the City of Palo Alto (the "Charter").
- B. Under the Public Employees' Retirement Law and the California Public Employees' Pension Reform Act of 2013, the City Council may appoint a CalPERS retiree to a Retired Annuitant position without reinstatement from retirement within 180 days of retirement if such appointment is necessary because the retired person has specialized skills needed in performing work of limited duration. The City requires the additional services of a retired annuitant to complete a special project and to perform work in excess of what regular staff are reasonably able to do.
- C. Notwithstanding any provision of the City of Palo Alto Merit System Rules and Regulations, the Retired Annuitant serves on an at-will basis, with no expectation of continued employment, and with no right to pre-or post- separation due process or appeal.
- D. Raschke desires to be employed by the City as a Retired Annuitant Extra Help Senior Engineer, subject to the terms and conditions in this Agreement, the Palo Alto Municipal Code, the Charter, the Palo Alto Merit System Rules and Regulations, and all other applicable laws, resolutions, and policies.
- E. The City and Raschke wish to establish specific terms and conditions relating to compensation and benefits and related matters.

BASED UPON THE FOREGOING, THE CITY AND RASCHKE AGREE AS FOLLOWS:

1. **Employment.** The City appoints Raschke as a Retired Annuitant for a term not to exceed 24 months to begin on **March 25, 2024**, or upon CalPERS approval, whichever is later. Except as otherwise provided herein, Raschke's employment with the City shall be governed by the City Council adopted Compensation Plan for Limited Hourly Employees, as it currently exists and may be changed from time to time.

2. **Duties of the Retired Annuitant.** Raschke will perform the duties established for the Retired Annuitant Extra Help Senior Engineer by direction given by the Public Works Director, and as otherwise provided by law, resolution, or regulation. Raschke agrees to comply with all federal, state and local laws, ordinances, rules and regulations applicable to or associated with these duties.

2.1. **No Conflict.** Raschke will not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with or which interferes with the performance of their duties. Raschke acknowledges that they are subject to the various conflict of interest requirements found in the California Government Code and state and local policies and regulations.

2.2. **Permission Required for Outside Activities.** Raschke will not engage in any employment, activity, consulting service, or other enterprise, for compensation or not, without written permission of the City Council.

3. **Salary.** While performing the duties of Retired Annuitant, Raschke will receive a base salary within the range for Senior Engineers provided in the City Council-approved Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time. Raschke will receive an hourly base rate of one hundred seven dollars and twenty cents (\$107.20) per hour, beginning on March 25, 2024, or upon CalPERS approval, whichever is later. This amount is subject to authorized or required deductions and withholding, prorated, and paid on the City's regular paydays. Raschke is a non-exempt employee under applicable wage and hour law.

4. **Benefits and Allowances.** Pursuant to California Government Code Section 21224, Raschke shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

5. **Duration of Employment.** Raschke understands and agrees that he has no constitutionally protected property or other interest in his employment as a Retired Annuitant. Raschke waives any and all rights, if any, under the Merit System Rules and Regulations, including without limitation, the right to pre-or post-disciplinary due process. Raschke understands and agrees that he works at the will and pleasure of the City and that he may be terminated or asked to resign at anytime, with or without cause. Raschke may terminate this agreement (terminating all employment) upon 30 days written notice.

6. **Miscellaneous.**

6.1. **Notices.** Notices given under this Agreement shall be in writing and shall be either: a) served personally; or b) sent by facsimile (provided a hard copy is mailed within one (1) business day); or c) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or d) sent by Federal Express, or some equivalent private mail delivery service. Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY: Attn: Human Resources
250 Hamilton Avenue, Palo Alto CA 94301
Phone (650) 329-2376

RASCHKE: Matthew Raschke
250 Hamilton Avenue, Palo Alto CA 94301
Phone (650) 329-2100

6.2. **Entire Agreement/ Amendment.** This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached herto.

6.3. **Applicable Law and Venue.** This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the proper court in Santa Clara County.

6.4. **Severability.** In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

6.5. **Waiver.** Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

6.6. **Representation by Counsel.** Raschke and the City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.

6.7. **Section Headings.** The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

Raschke, Matthew

Mayor

Approved as to Form:

City Attorney's Office