

DATE: November 27, 2007

TO: Mayor and City Council

FROM: Interim Mayor Pro Tempore

SUBJECT: City Attorney Appointment – Approval of Employment Agreement and Election of Interim Mayor Pro Tempore for the Purpose of Executing the Agreement

RECOMMENDATION

It is hereby recommended that Council adopts the attached resolution appointing Michael Lawson as City Attorney of the City of Hayward and electing a Council Member to act as Interim Mayor Pro Tempore for the purpose of executing the employment agreement in substantially the form attached as Exhibit B.

BACKGROUND

Pursuant to the direction of Council, attached is a resolution appointing Michael Lawson as City Attorney and electing a Council Member to act as Interim Mayor Pro Tempore for the purpose of executing the employment agreement referenced as Exhibit B.

Exhibits: A – Media Release
B – Employment Agreement

DRAFT *MAC*
11/21/07

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION OF THE HAYWARD CITY COUNCIL
APPOINTING MICHAEL LAWSON AS CITY ATTORNEY
AND ELECTING AN INTERIM MAYOR PRO TEMPORE TO
EXECUTE AN EMPLOYMENT AGREEMENT

BE IT RESOLVED by the City Council of the City of Hayward that Michael
Lawson is hereby appointed as the City Attorney of the City of Hayward effective January 2,
2008.

BE IT FURTHER RESOLVED that the City Council of the City of Hayward will
authorize a Council Member to act as Interim Mayor Pro Tempore of the City of Hayward for the
purpose of executing the employment agreement attached hereto as Exhibit "B".

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2008

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A



MEDIA RELEASE

Release Date: November 21, 2007

Contact: Office of the City Manager
Phone: 510-583-4300

Michael Lawson Selected As City Attorney

East Palo Alto's long-time City Attorney, Michael Lawson, will become Hayward's new City Attorney in January, Hayward officials have announced. The City Council is expected to publicly approve Lawson's appointment at Tuesday's meeting. Lawson will succeed Michael O'Toole, who retired in September after 14 years as City Attorney. Assistant City Attorney Maureen Conneely has been serving as Acting City Attorney.

Lawson, 61, has served as East Palo Alto City Attorney for nearly 15 years (April, 1993), and previously served as City Attorney for Berkeley and Oakland. "Lawson's breadth of experience, savvy, and ability to work in a positive team environment impressed the City Council, and we had a great list of applicants," said long-term Councilmember Bill Ward.

Lawson said he looks forward to the new challenges, adding: "The City Council clearly respects the lawyers in the City Attorney's office, and I plan on supporting the staff and upholding the tradition of excellence."

Lawson joins newly-appointed City Manager Greg Jones, who started October 1, after serving as Chico City Manager and previously as Concord's Assistant City Manager. Jones succeeded Jesús Armas, who retired earlier this year after 14 years as City Manager.

"These are skilled veterans, who will help the Council navigate important challenges in the near future and the long term," said Ward.

In East Palo Alto, Lawson has been at the center of several high-profile legal disputes. Lawson gained the dismissal of a wrongful death lawsuit filed against the City by the family of a man shot and killed by a police officer during a foot pursuit. Lawson also settled four lawsuits involving claims of alleged sex discrimination within the police department and officer misconduct involving citizens.

Lawson helped East Palo Alto win important legal victories involving the University Circle office and hotel complex and the IKEA development project. Lawson's office also dramatically decreased payouts of settlements in personal injury cases and employment disputes, but the city lost a key decision involving the controversial 1980s excise tax, resulting in a refund of \$4.5 million.

In Berkeley, Lawson defended a charter amendment in which voters approved rent control, and in Oakland he defended citizen review of police officer disciplinary hearings.

Lawson is himself no stranger to controversy. In 1980, while City Attorney in Oakland, Lawson was found innocent of shoplifting two newspapers and a frozen juice bar from a city hall snack shop. Lawson described the experience as “personally and professionally embarrassing,” adding that he was happy to have been ultimately vindicated.

“I am grateful for the confidence the City Council has expressed in me and for Hayward’s forward-thinking and inclusiveness,” Lawson said.

Lawson’s base pay will be \$180,000.

Lawson has a B.A. in communication from Cal State Hayward, and a law degree from the University of California, School of Law.

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For additional information please contact: Greg Jones, City Manager, 510-583-4300

EXHIBIT B

Employment Agreement

Introduction

This Agreement, made and entered into this ____ day of _____, 2007, by and between the City of Hayward, a chartered California City and municipal corporation, (hereinafter called "Employer") and Michael Lawson, (hereinafter called "Employee"), both of whom agree as follows:

Section 1: Term

The term of this agreement shall be for an initial period of two (2) years from January 2, 2008 through December 31, 2009. Thereafter, this Agreement shall automatically be renewable on its anniversary date for terms of one (1) year until terminated by either party as provided herein.

Section 2: Duties and Authority

Employer agrees to employ the Employee as City Attorney to perform the functions and duties specified in Article VIII, Section 808 et seq. of the Hayward City Charter and such other duties and functions as directed by the City Council.

Section 3: Compensation

The Employer agrees to pay Employee an annual base salary of \$180,000 and annual deferred compensation of \$1,010. The Employer agrees to pay the Employee in equal installments on a bi-weekly basis during the term of this Agreement.

Section 4: Health, Disability, Life Insurance, and Other Benefits

Upon commencing employment, the Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents equal to that which is provided to all other full-time employees of the Employer.

Similarly, the Employer agrees to put in force and to make required premium payments for short-term and long-term disability insurance coverage for the Employee while this Agreement is in force. The Employer shall also pay the amount due for term life insurance in an amount equal to one times the annual salary, including all increases during the life of this Agreement. The Employee shall have the right to choose the beneficiary on such policies.

In addition to the benefits set forth herein, all actions taken by the City Council relating to employee salary and benefits for employees in the Management Unit shall be considered actions granting the same benefits to Employee.

Section 5: Vacation, Sick Leave, and Administrative Leave

Employee shall be entitled to a total of twenty (20) days of vacation annually, exclusive of holidays recognized by the Employer, to which the Employee shall also be entitled.

Employee shall be entitled to eighty (80) hours of administrative leave annually as provided by the Memorandum of Understanding (MOU) for the City's Management Unit. Employee shall accrue sick and vacation leave on an annual basis.

In the event of termination, either voluntarily or involuntarily, the Employee shall be compensated for accrued sick and vacation time, as of the date of termination, as provided by the Management MOU.

Section 6: Automobile and Monthly Expense Allowance

To compensate the Employee for automobile and other expenses related to the duties of City Attorney, the Employer agrees to provide a monthly Automobile and Monthly Expense Allowance of four hundred twenty-five dollars (\$425) to compensate the Employee for expenses related to the use, purchase and-or lease of an automobile, as well as to operate, insure and maintain a vehicle, as well as for other expenses related to the duties of the Employee. Such allowance shall be adjusted annually to reflect increases in the cost of living.

Section 7: Retirement

The Employer agrees to enroll the Employee into California Public Employees Retirement System (PERS) and during the life of this Agreement to make the appropriate contributions as required to PERS for both the Employee (7%) and the Employer. Employee shall be required to supplement the Employee portion of the PERS contribution by paying one percent (1%) per annum.

Section 8: Terminations

For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting; or
2. If the Employer, citizens or legislature acts to amend any provisions of the charter, ordinances or appropriate enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially

changes the form of government, the Employee shall have the right to declare that such amendments constitute termination; or

3. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion; or
4. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.

Section 9: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 8. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six months' salary and benefits at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays, and executive leave as provided in the Management MOU. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

If the Employee is terminated because of a conviction of a felony, then the Employer is not obligated to pay severance under this section.

Section 10: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 90 days notice unless the parties agree otherwise.

Section 11: Performance Evaluation

Employer shall annually review the performance of the Employee.

Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment.

Section 14: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Attorney or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee.

Section 15: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 16: Other Terms and Conditions of Employment

The Employer may fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Hayward City Charter or any other law.

Section 17: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: Mayor of the City of Hayward
Hayward City Hall
777 "B" Street
Hayward, California 94541

(2) EMPLOYEE: Michael Lawson
200 Caldecott Lane, Unit 309
Oakland, CA 94618

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on the date that is approved by the Hayward City Council.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Executed by:

Interim Mayor Pro Tempore

Michael Lawson

Employee