

City of Piedmont
COUNCIL AGENDA REPORT

DATE: May 5, 2025

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of Resolution Approving an Exception to the 180-Day CalPERS Waiting Period for a Retired Annuitant Under Government Code sections 7522.56 and 21221(h) and Appointing Mike Szczech as Interim Finance Director to Fill a Critical Need in the Finance Department for the City of Piedmont; and Authorizing Execution of a Retired Annuitant Employment Agreement

RECOMMENDATION

By a single motion, take the following actions:

1. Adopt Resolution No. _____ approving an exemption to the 180-day CalPERS waiting period for a retired annuitant, in accordance with Government Code Sections 7522.56 and 21221(h), and Appointing Mike Szczech as Interim Finance Director; and
2. Authorize the City Administrator to execute a retired annuitant employment agreement with Mike Szczech

BACKGROUND

City of Piedmont Finance Director Michael Szczech retired from the City of Piedmont, effective January 24, 2025. In anticipation of his retirement, the professional services of Peckham & McKenney were secured. Unfortunately, the candidate pool was limited and the initial recruitment effort did not reach a successful conclusion. To support ongoing operations, the City pivoted to appoint an interim Finance Director while pursuing a second recruitment process. Lisa Malek-Zadeh served in this role from January 24, 2025 through April 29, 2025.

On April 30, 2025, the City Council appointed Kiran Bawa as Piedmont's next Finance Director. Ms. Bawa's start date is July 2, 2025. As such, the Finance Director position remains vacant until Ms. Bawa's start date. The City has an immediate and critical need to fill the position of Finance Director on an interim basis. Mr. Szczech is uniquely qualified, skilled and available to fulfill the duties and responsibilities of the position on an interim basis.

DISCUSSION

Retired Annuitant Employment and Rules

As Mr. Szczech will be a retired annuitant, his employment is restricted by State law and California Public Employees Retirement System (CalPERS) regulations. A retired annuitant is a CalPERS

retiree who works as an at-will employee with certain restrictions to avoid jeopardizing one's retirement allowance. State and federal laws provide specific employment restrictions for retired annuitants who return to work for an employer in the same public retirement system from which they receive a benefit. Section 7522.56 and 21221(h) of the California Government Code states that a retiree may only work for CalPERS agencies a maximum of 960 hours per fiscal year. The law also states that if an agency wishes to reemploy such individual sooner than 180 days after retirement, the governing board must certify that the nature of the appointment is necessary to fill a critical need. Additionally, compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties. The monthly salary for the Finance Director is \$17,821.00 or \$102.81 per hour, as approved in the City's publicly available pay schedule. Furthermore, per CalPERS guidelines, the retiree must certify that he has not or will not receive a Golden Handshake or any other retirement-related incentive.

Resolution No. _____ and the proposed employment agreement for Mike Szczech as a retired annuitant meets these requirements.

FISCAL IMPACT

Mike Szczech will be paid \$102.81 per hour and may work a total of 960 hours per fiscal year. Pursuant to CalPERS law, he may not receive any additional compensation or benefits.

ATTACHMENTS

1. Resolution ____ Approving an Exception to the 180-Day California Employees' Retirement System (CalPERS) Waiting Period for a Retired Annuitant Under Government Code sections 7522.56 and 21221(h); and Retired Annuitant Employment Agreement (Exhibit A to Resolution)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT,
CALIFORNIA, APPROVING AN EXCEPTION TO THE 180-DAY
WAITING PERIOD TO HIRE A CALPERS RETIRED ANNUITANT IN
ACCORDANCE WITH GOVERNMENT CODE SECTIONS 7522.56
AND 21221 AND AUTHORIZING AN EMPLOYMENT AGREEMENT
WITH MIKE SZCZECH TO PROVIDE TEMPORARY INTERIM HELP
AS A RETIRED ANNUITANT FOR A LIMITED DURATION**

WHEREAS, in compliance with Government Code section 7522.56 the City of Piedmont (the “City”) must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Mike Szczech, retired from the City in the position of Finance Director, effective January 24, 2025; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is July 22, 2025, without this certification resolution; and

WHEREAS, 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

WHEREAS, the City Council, the City, and Mike Szczech certify that Mike Szczech has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council hereby appoints Mike Szczech as a retired annuitant for the critical need of providing interim Finance Director duties for the City under Government Code section 21221, effective May 6, 2025; and

WHEREAS, the City Council has authorized the search for a permanent appointment and the position was publicly posted on July 19, 2024; and

WHEREAS, the entire employment agreement (“Agreement”) between Mike Szczech and the City has been reviewed by the City Council and is attached to this Resolution as Exhibit A; and

WHEREAS, this Gov. Code section 21221(h) appointment shall only be made once and therefore will end on the earliest of the following: (i) July 1, 2025; (ii) upon Szczech working his 960th hour as a retired annuitant for City and other CalPERS agencies during City’s 2024/2025 fiscal year or subsequent fiscal year; or (iii) upon termination of the Agreement; and

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

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, 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

WHEREAS, Szczech will be performing comparable duties as the Finance Director; and

WHEREAS, the base salary for this position is \$17,821 per month and the hourly equivalent is \$102.81, and

WHEREAS, the hourly rate paid to Mike Szczech will be \$102.81; and

WHEREAS, Mike Szczech has not and will not receive from the City any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine and order as follows:

1. The above recitals are correct and are incorporated into this resolution as findings of the City Council.
2. The nature of the appointment of Mike Szczech as described herein and detailed in the attached employment agreement (Exhibit A) as a retired annuitant or the critical need of providing interim Finance Director duties for the City beginning May 6, 2025.
3. The City Administrator is authorized to enter into the retired annuitant employment agreement with Mike Szczech (Exhibit A).

[END OF RESOLUTION]

**EMPLOYMENT AGREEMENT
For
INTERIM FINANCE DIRECTOR**

This Employment Agreement ("Agreement") is made by and between the CITY OF PIEDMONT ("City") a California municipal corporation and Charter city, and MICHAEL SZCZECH ("SZCZECH"), an individual, (collectively, the "Parties") on the following terms and conditions:

RECITALS

- A. CITY desires to employ the services of SZCZECH to temporarily carry out the duties and responsibilities of Finance Director in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.
- B. CITY's Finance Director position has been vacant since January 24, 2025.
- C. CITY has commenced with an open recruitment to permanently fill the vacant position of Finance Director. During the recruitment period, the City has an immediate need for an Interim Finance Director, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the Finance Department.
- D. CITY desires to accept employment of an Interim Finance Director in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.
- E. SZCZECH represents that he is a retired annuitant and person receiving a benefit from the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code §§ 7522.56 and 21221(h). SZCZECH acknowledges that he is restricted to working no more than a combined 960 hours for CITY, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2025-2026 fiscal year, or for any additional or subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). SZCZECH represents that he has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement. SZCZECH further represents his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement; that he has not received a retirement incentive upon retirement within the meaning of Government Code § 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code § 21220.5; and
- F. CITY has determined that the appointment of SZCZECH by no later than May 6, 2025, the effective date of this Agreement, is necessary due to critical

need, and will submit to CalPERS a resolution of such certification approved by the City Council.

G. OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 Position. SZCZECH accepts employment with CITY as its Interim FINANCE DIRECTOR and shall perform all functions, duties and services set forth in the attached FINANCE DIRECTOR Classification description ("Exhibit A"). Without additional compensation, SZCZECH shall also provide such other services as are customary and appropriate to the position of Interim Finance Director. SZCZECH shall devote his best efforts and attention to the performance of these duties. SZCZECH shall provide service at the direction and under the supervision of the City Administrator. It is the intent of the parties that SZCZECH, as the Interim Finance Director, shall keep the City Administrator fully apprised of all significant ongoing operations of the Finance Director's Office. Toward that end, SZCZECH shall report directly to the City Administrator and will periodically, or as may be otherwise specifically requested by the City Administrator, provide status reports to the City Administrator on his activities as Interim Finance Director.

1.2 Term. This Agreement shall be effective as approved by the City Council on May 6, 2025. SZCZECH shall commence the performance of his duties as the Interim Finance Director on May 6, 2025 ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) June 30, 2025; (ii) upon the employment commencement date of a permanent Finance Director employed by CITY; (iii) upon SZCZECH working his 960th hour for CITY including hours worked for other CalPERS Agencies during CITY's 2025-2026 fiscal year; or (iv) upon termination of the Agreement by either SZCZECH or CITY as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. SZCZECH acknowledges that he is an at-will, temporary employee of CITY who shall serve at the pleasure of the City at all times during the period of his service under this Agreement and that his employment may be terminated at any time and for any or no reason with or without cause as provided for in Section 4 [TERMINATION] of this Agreement or by operation of California or federal law. The terms of CITY's personnel rules, policies, regulations, procedures, ordinances, and resolutions, memoranda of understanding, regarding City Administrative Personnel (collectively "Personnel Policies"), as they may be amended or supplemented from time to time, shall not apply to SZCZECH, and nothing in this Agreement is intended to, or does, confer upon SZCZECH any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by CITY

to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of SZCZECH, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of SZCZECH to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will Employment Agreement shall be expressly subject to the rights and obligations of CITY and SZCZECH, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Hours of Work. SZCZECH shall devote the time necessary to adequately provide services. The parties anticipate that Szczech will work approximately twenty two and one half (22.5) hours per week during regular City business hours. Toward that end, SZCZECH shall be allowed flexibility in setting his own hours, provided the schedule of such hours provides reasonable availability to the CITY Administrator, and CITY staff and does not exceed forty (40) hours worked in a workweek.

1.5 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, SZCZECH shall not accept, without the express prior written consent of City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of SZCZECH's duties as Interim Finance Director.

2. Compensation.

2.1 Rate of Pay. For all services performed by SZCZECH as the Interim Finance Director under this Agreement, CIT shall pay SZCZECH compensation at the rate one hundred two dollars and eighty-one cents (\$102.81) per hour, to be paid according to the payroll schedule in place for CITY employees and subject to the limitations provided below.

2.2 Compliance with CalPERS Requirements. It is the intent of the parties to compensate SZCZECH only to the extent permitted under Government Code §§ 21221(h) and 7522.56(d) and corresponding CalPERS regulations and policy statements. The parties acknowledge and agree that the rate of pay set forth above does not exceed the salary limitations established by CalPERS based on the salary as set forth in the CITY's publicly available salary schedule.

2.2.1 Recording and Reporting of Hours Worked. SZCZECH will comply with all applicable CalPERS regulations governing employment after retirement

including recording and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, SZCZECH shall keep CITY continually apprised of any hours worked by SZCZECH for other CalPERS Agencies during the term of this Agreement.

2.3 Benefits.

2.3.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, SZCZECH shall not receive from CITY any benefits CITY commonly provides to its employees including, without limitation, health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. Vacation and Leave.

3.1 No Paid Leave. SZCZECH and CITY agree that SZCZECH in accordance with Government Code §21221(h) and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar paid leave benefits.

4. Termination.

4.1 By CITY. This Agreement may be terminated by CITY for any reason fourteen (14) days after notice in writing to SZCZECH of such termination. CITY's only obligation in the event of such termination will be payment to SZCZECH of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By SZCZECH. This Agreement may be terminated by SZCZECH for any reason fourteen (14) days after notice in writing to CITY of such termination. CITY shall have the option, in its complete discretion, to make SZCZECH's termination effective at any time prior to the termination date given by SZCZECH, provided CITY pays SZCZECH all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing his through the last day actually worked. It is understood and agreed that any notice of termination should be given as soon as practicable and in the best interest of CITY.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. SZCZECH agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as

defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of SZCZECH's employment. SZCZECH's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement

4.5 No Benefits Upon Termination. SZCZECH agrees that he shall be entitled to no benefits upon termination

5. **Proprietary Information.**

"Proprietary Information" is all information and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of CITY in the course of his employment or otherwise produced or acquired by or on behalf of CITY. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, SZCZECH shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, CITY shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. SZCZECH's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6. **Conflict Of Interest.**

SZCZECH represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

7. **General Provisions.**

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. SZCZECH shall operate any vehicle used in connection with the performance of his duties as Interim Finance Director in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California driver's license during the period of employment.

7.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by

hand or email or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and/or at the last known address maintained in SZCZECH 's personnel file. SZCZECH agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY's Notice Address:

City of Piedmont
120 Vista Avenue
Piedmont, CA 94611
Attn: City Administrator

Interim Finance Director's Address:

Michael SZCZECH
[Deliver to last updated address in personnel file]

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] CITY will indemnify, defend, and hold SZCZECH harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during SZCZECH's tenure as Interim Finance Director.

7.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of SZCZECH's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of SZCZECH, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to SZCZECH and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.6 Amendments. This Agreement may not be amended except in a written document signed by SZCZECH, approved by the City Council and signed by the City Administrator.

7.7 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.8 Assignment. SZCZECH shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to SZCZECH, assign its rights and obligations hereunder.

7.9 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and any action in connection with or arising out of this Agreement or any dispute between the parties shall be commenced and maintained in the Superior Court of the State of California for the County of Alameda or the United States District Court for the Northern District of California.

7.11 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.12 Acknowledgment. SZCZECH acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its City Administrator and SZCZECH has signed and executed this Agreement, as of the date first indicated above.

CITY:

INDIVIDUAL:

ROSANNA BAYON MOORE
City Administrator

MICHAEL SZCZECH

Attest:

APPROVED AS TO FORM

MICHELLE MARCHETTA KENYON
City Attorney

EXHIBIT A:
FINANCE DIRECTOR JOB CLASSIFICATION