



# Agenda Item

## City Council

Item #: 9.2.

2/25/2025

File #: 25-0085

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, City Manager

**FROM:** Monica Espinoza, Human Resources Director

### 1. SUBJECT

Employment Agreement of a retired annuitant for the vacant position of Interim City Attorney pursuant to Government Code Section 21221(h). Resolution No. 11601.

### 2. SUMMARY

Resolution No. 11601 authorizes the City Council's appointment of Wayne W. Winthers to serve on an interim basis to the vacant position of Interim City Attorney effective February 25, 2025.

### 3. RECOMMENDED ACTION

Adopt Resolution No. 11601. A Resolution of the City Council of the City of Orange approving the Employment Agreement of a retired annuitant for the position of Interim City Attorney, pursuant to Government Code Section 21221(h).

### 4. FISCAL IMPACT

The City Attorney position is already included in the Fiscal Year 2024-25 budget and is funded as follows: General Fund (100) = 90%; Self Insurance Workers' Compensation Fund (730) = 5%; and Self Insurance Liability Fund (740)= (5%). In accordance with CalPERS requirements, Wayne W. Winthers would not receive any compensation or benefits, other than his hourly rate, while employed as a retired annuitant.

### 5. STRATEGIC PLAN GOALS

Goal 4: Improve Employee Retention and Recruitment

Objective 4.5: Implement Succession Planning Strategies

### 6. DISCUSSION AND BACKGROUND

Wayne W. Winthers previously served as the City Attorney for the City of Orange from July 2012 until March 2019 when he retired from public service after approximately 32 years, 25 of those years were honorably served in the City Attorney's Office for the City of Orange. City Attorney Winthers retired from the California Public Employees' Retirement System (CalPERS) on March 7, 2019.

CalPERS recognizes that retirees play an important role in maintaining city operations and keeping cities safe, particularly in short-term or emergency situations. Government Code Section 21221(h) provides specific guidance on employing a CalPERS retiree that will serve in a vacant executive, managerial or other unique position, such as City Manager, City Attorney, and other Department

Heads without interruption to retirement benefits or reinstatement from retirement. Government Code 21221(h) requires that the City Council expressly authorize the appointment of a retired annuitant to an interim vacant position.

Conditions within Government Code Section 21221(h) include:

- City Council appointment to a vacant position in the form of a resolution or contract;
- The vacant position requires a specialized skillset and being recruited for permanent appointment;
- Appointment must be for a limited duration of no more than 960 hours in a fiscal year;
- The retired annuitant must be compensated within the approved salary schedule for the position and cannot receive any additional rights or benefits; and
- The retired annuitant can only be appointed once to a vacant position.

The City has a critical and time-sensitive need for Wayne W. Winthers to work for the City on a temporary basis after his retirement from full-time employment status. The City is in the process of recruiting for a new permanent City Attorney; however, staff anticipates there will be a gap of at least two to three months, possibly longer before the appointment of a new permanent City Attorney. During this interim period, the City needs a qualified individual with a specialized skillset to continue to perform all essential functions of the position without interruption, at the retired hourly rate of \$150.00 per hour, with no other rights or benefits, incentives, or other compensation in lieu of benefits, or any other forms of compensation to be provided during the appointment. Wayne W. Winthers' employment will end when a permanent replacement is appointed by the City Council and he will not exceed 960 hours worked in a fiscal year. All parties understand that the appointment to the Interim City Attorney position may only happen once.

## **7. ATTACHMENTS**

- Resolution No. 11601
- Employment Agreement with Retired Annuitant Wayne W. Winthers