

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew J. Fertal   From: Laura Stover  
 Dept: City Manager    Dept: Human Resources  
 Subject: ADOPTION OF A RESOLUTION                                   Date: November 25, 2014  
           AMENDING THE CENTRAL  
           MANAGEMENT PERSONNEL  
           CLASSIFICATION LIST TO ADD THE  
           POSITION OF PUBLIC SAFETY  
           ADMINISTRATIVE OFFICER AND  
           ESTABLISHING THE SALARY  
           THEREFOR, AND APPROVAL OF A  
           PREVIOUSLY AUTHORIZED  
           SETTLEMENT AGREEMENT WITH  
           DAVID BARLAG REGARDING  
           THREATENED LITIGATION

OBJECTIVE

To request that the City Council adopt the attached Resolution amending the current Central Management Personnel Classification List (Classification List) to add the classification of Public Safety Administrative Officer, and to have the City Council approve the previously authorized Settlement Agreement with David Barlag.

DISCUSSION

An amendment to Resolution No. 9251-14 is necessary to add a new classification of "Public Safety Administrative Officer" to the Classification List.

FINANCIAL IMPACT

Associated current fiscal year costs will be absorbed within the approved General Fund budget.

RECOMMENDATION

It is recommended that the City Council:

- Adopt the attached Resolution amending Resolution No. 9251-14 to add a new classification of Public Safety Administrative Officer, with a current basic salary of \$17,967 per month, to the Central Management Personnel Classification list;
- Approve the attached previously authorized Settlement Agreement with David Barlag regarding threatened litigation; and
- Ratify the execution of the Settlement Agreement by the City Manager.

*Laura Stover*  
 LAURA STOVER  
 Human Resources Director

Attachment 1: Resolution  
 Attachment 2: Settlement Agreement  
 Attachment 3: Resolution No. 9251-14

Recommended for Approval

*Matthew Fertal*  
 Matthew J. Fertal  
 City Manager



GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
AMENDING RESOLUTION NO. 9251-14 RELATING TO PERSONNEL CLASSIFICATIONS  
FOR CENTRAL MANAGEMENT POSITIONS OF THE CITY OF GARDEN GROVE

NOW, THEREFORE, BE IT RESOLVED that:

Resolution No. 9251-14 is amended to add the following Personnel  
Classification to Section 1 of the Central Management Personnel Classification List  
as follows:

SECTION 1:

The following classification is a new title and shall be added to the Central  
Management Personnel Classification List:

<u>Personnel Classification</u>	<u>Salary Range</u>
Public Safety Administrative Officer	255



**CITY OF GARDEN GROVE**  
**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is made and entered into, to be effective this <sup>DNS</sup> 29<sup>th</sup> day of September 2014 ("Effective Date"), by and between the City of Garden Grove ("Employer") and David Barlag (referred to herein as "Employee") (collectively referred to herein as "the Parties").

**RECITALS**

A. **WHEREAS**, the Parties desire to mutually resolve any and all possible issues and claims related to Employee's employment with Employer; and

B. **WHEREAS**, Employer and Employee acknowledge that Employee's retirement date will be December 31, 2016 ("Retirement Date"); and

C. **WHEREAS**, the Parties acknowledge that by this Agreement Employee and Employer will be agreeing to a mutual release of all claims.

**NOW THEREFORE**, for good and sufficient consideration, as set forth below, the parties agree as follows:

**AGREEMENT**

1. Consideration to Employee.

a. Continued Employment. Employee voluntarily and irrevocably resigns from his position as Fire Chief on the Effective Date of this Agreement ("Resignation Date"). Commencing the first day following Employee's Resignation Date, Employee shall be appointed as the City's Public Safety Administrative Officer and shall perform the duties set forth in the job description for the position through and including the Retirement Date, unless he opts to resign or retire sooner. If Employee opts to resign or retire sooner, he shall give 30 days' notice to the City Manager. Employee shall report directly to the City Manager and shall receive the following:

i. Salary which corresponds to C255 on the City's Salary Schedule;

ii. Training Premium of 5%; and

iii. With the exception of a vehicle or a vehicle allowance (which Employee shall not receive), all other benefits provided to Central Management employees pursuant to the Resolution for Central Management Employees currently in effect, and as amended through and including the Retirement Date.

b. Attorneys' Fees. After execution of this Agreement and expiration of the seven day revocation period set forth in Paragraph 10 of this Agreement, Employee shall receive an amount not to exceed \$3,750 in attorneys' fees and costs incurred by Employee in the negotiation of this Agreement. Employee shall receive a form 1099 for this amount.

2. Retirement. As a condition of receiving the consideration set forth in Paragraph 1, Employee **voluntarily and irrevocably** will retire from his position as Public Safety Administrative Officer on December 31, 2016.

3. Mutual General Releases. In further exchange for the consideration set forth in Paragraph 1, Employee gives up and waives any right to grieve, appeal or litigate any matter or possible claim or cause of action relating to or arising out of his employment with Employer, including his decisions to resign and retire consistent with the terms of this Agreement, against the Employer or any of its officers, directors, supervisors, agents, representatives or employees (collectively the "Employer Releasees"), pursuant to any Employer ordinance, rule, resolution, practice, policy, custom, agreement, memoranda of understanding, or any state or federal law.

Without limiting the generality of the description, the claims herein released include, but are not limited to, claims based upon:

- a. Title VII of the Civil Rights Act of 1964;
- b. Americans with Disabilities Act and the Rehabilitation Act;
- c. Family and Medical Leave Act and California Family Rights Act;
- d. Age Discrimination in Employment Act;
- e. California statutory or decisional law, including but not limited to: (1) the Fair Employment and Housing Act, pertaining to employment discrimination, harassment, and retaliation, (2) wrongful discharge in violation of public policy; and (3) wrongful termination in breach of the implied covenant of good faith and fair dealing;
- f. Any and all state, federal, and local laws as well as common law for breach of contract, employment discrimination, harassment or retaliation, negligent or intentional infliction of emotional distress, defamation, fraud, concealment, false promise, negligent misrepresentation, and intentional interference with contractual relations;
- g. Whistleblower protections;
- h. Any Constitutional or statutory due process rights, right to privacy, and other civil rights violations;
- i. Discrimination claims in violation of Labor Code section 132a;
- j. Claims for unpaid wages arising out of California or federal law through the Retirement Date; and
- k. Firefighters Procedural Bill of Rights Act.

Expressly excluded from this release are any rights Employee may have to a disability retirement pursuant to Government Code sections 21153, *et. seq.* While Employee is not precluded from submitting a disability retirement application to the California Public Employment Retirement System, nothing in this Agreement shall be construed as a guarantee that such application will be granted or that the City will support such an application.

In consideration for the agreement by Employee, Employer Releases release Employee from any claims through the Effective Date of this Agreement.

4. Mutual Releases of Unknown Claims. Employee and Employer acknowledge that they may have claims that are covered by the terms of this Agreement which they have not yet

discovered. The Parties hereby release any and all such unknown or unsuspected claims against the other that may have arisen through and including the Effective Date of the Agreement. The Parties expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code which provides:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

5. No Admission of Liability. Employer and Employee agree that this Agreement and the consideration provided by the Employer described herein is not an admission by either party of any wrongdoing or liability. Each party specifically denies any liability or wrongful acts against the other. The parties have entered into this Agreement in order to settle all possible and potential disputes and differences between them, without admitting liability or wrongdoing by any party.

6. Confidentiality. Both parties agree that this Agreement shall remain confidential as a personnel record within the meaning of Government Code Section 6254(c) to the extent permitted by law. In the event a Public Records Act request is made to review and/or copy this Agreement, Employer's only obligation shall be to timely notify Employee of that request. Employer shall not be obligated to incur legal expenses to deny such a request. Except to the extent required by law, neither party shall disclose the terms or substance of this Agreement, except that Employee may disclose such terms to his counsel, financial advisors, and immediate family. Failure to comply with this provision shall constitute a material breach of the Agreement.

7. Advice of Counsel. Employee has been advised of his right to seek the advice of counsel prior to executing this Agreement and Employee has accordingly retained legal services. Employee has read and fully understands all of the provisions of this Agreement and is freely and voluntarily entering into this Agreement.

8. Enforcement. The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.

9. Acknowledgement and Waiver of Twenty-One Days to Consider. Employee has been advised of the right to consider this Agreement for up to twenty-one (21) days prior to its execution and voluntarily waives this period, electing with full knowledge and consent to execute this Agreement at this time.

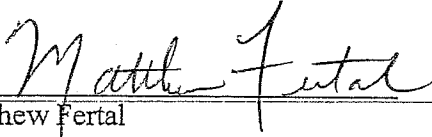
10. Revocation. Employee may revoke this Agreement for a period of seven (7) calendar days following its execution which will coincide with Effective Date. Said revocation must be in writing, must specifically revoke this Agreement, and must be received by the City's Human Resources Director, prior to the end of the seventh day following Employee's execution. Upon expiration of the seven-day period, this Agreement becomes effective, enforceable and irrevocable.

11. Complete Agreement. This is the entire agreement between Employer and Employee with respect to the subject matter herein and this Agreement supersedes all prior and contemporaneous oral and written agreements and discussions.

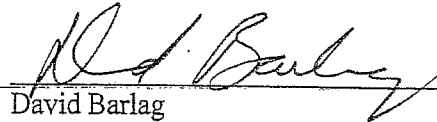
12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any Party may execute this Agreement by way of a facsimile or electronic signature, a copy of which will operate as an original. The party executing a facsimile or electronically scanned and transmitted copy shall promptly transmit a copy thereof to all other parties.

**CITY OF GARDEN GROVE**

**EMPLOYEE**



Matthew Fertal  
City Manager



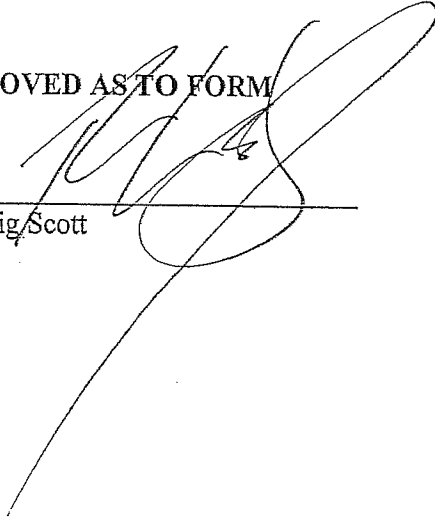
David Barlag

**APPROVED AS TO FORM**



Barbara Raileanu  
Deputy City Attorney

**APPROVED AS TO FORM**



R. Craig Scott



## GARDEN GROVE CITY COUNCIL

## RESOLUTION NO. 9251-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
 ESTABLISHING A SALARY PLAN FOR CERTAIN POSITIONS IN CENTRAL  
 MANAGEMENT CLASSIFICATIONS AND EXEMPTING CENTRAL MANAGEMENT  
 CLASSIFICATIONS FROM MUNICIPAL CODE SECTION 2.44.390 AND OVERTIME

WHEREAS, Chapter 2.44 of the Garden Grove Municipal Code, revised, Volume 1, provides that the City Council shall by resolution: (1) establish salary ranges and salary rates and the allocation of classes thereto; and (2) set forth the classification of full-time positions in the various City departments and offices;

BE IT RESOLVED that all prior Resolutions in conflict herewith are hereby repealed so as to avoid all conflict.

BE IT FURTHER RESOLVED that the City Council does establish the following:

SECTION 1: CENTRAL MANAGEMENT CLASSIFICATIONS

For purposes of this Resolution, Central Management positions are identified as follows:

<u>Personnel Classification</u>	<u>Salary Range</u>
Community Development Director	245
Community Services Director	240
Economic Development Director	245
Finance Director	245
Fire Chief	250
Information Technology Director	240
Human Resources Director	240
Police Chief	255
Public Works Director	245
Deputy City Manager	240

SECTION 2: WAGES

1. Effective the first full pay period following July 1, 2014, the salary range of each classification listed in this Resolution will be increased by two percent (2%).

### SECTION 3: BENEFITS

Unless otherwise provided, benefits and leave Policies as offered in the Middle Management group will be offered to the classifications listed in this Resolution.

Central Management employees are not eligible for any education incentive programs offered by the City, but are eligible to participate in the Tuition Reimbursement Program.

Central Management employees who meet the same qualifications for the vacation buy-back provision shall have the option to use this benefit any time during the calendar year.

Central Management employees are eligible for an executive medical (physical) examination on an annual basis, to be provided by the City if requested. Central Management employees also receive the executive long-term disability insurance benefit.

### SECTION 4: RETIREMENT

- a. Effective January 1, 1994, the employee shall begin to pay the Employee's Contribution to the Public Employees Retirement System (PERS). The City shall allow these contributions to be treated as "pick-up" in accordance with Section 414 (h) 2 of the Internal Revenue Service and applicable Government Code Sections. These "pick-up" contributions, to the extent permissible, shall be treated as deferred income to the employee for federal and state tax purposes.

The employee shall indemnify and hold the City harmless from any and all claims, demands, suits, actions, liabilities, or judgments of any kind whatsoever arising out of or in connection with the actions to be taken and/or the "pick-up" contributions to be made pursuant hereto.

Any future income tax obligations resulting from the "pick-up" contributions shall be the exclusive responsibility of the employee. In the event the Internal Revenue Service shall change its current position and determine that such contributions constitute salary, not deferred income, any resulting tax obligations shall be the exclusive responsibility of the employee and the City shall not be held responsible therefore.

- b. The City currently contracts with PERS for the following retirement formula for miscellaneous employees:

- 1) Section 21354.4 (2.5% at 55 Full formula for local miscellaneous members – Active members only)
  - 2) Section 20024.2 (Highest Year)
  - 3) Section 20862.8 (Credit for Unused Sick Leave)
  - 4) Employees pay the entire Employee Contribution.
- c. Miscellaneous employees pay a total of eight percent (8%) Employee Contribution for the 2.5% at 55 Full formula.
- d. The City currently contracts with PERS to provide the following benefit to the Public Safety retirement plan, for sworn Police and Fire management employees:
- 1) Section 21362.2 (3% at 50 Full formula for local Public Safety members)
  - 2) Section 20024.2 (Highest Year)
  - 3) Section 20862.8 (Credit for Unused Sick Leave)
  - 4) Sworn Public Safety Management employees pay the entire Employee Contribution.
- e. Police Chief and Fire Chief
- 1) General Provision

Effective January 1, 2013, the Police Chief and the Fire Chief will each receive ten (10) hours of pay in-lieu of holiday leave for each of the eleven (11) holidays as designated below in subpart 4 of this subsection. This additional compensation will be paid as the holiday occurs and shall be reported to PERS as Special Compensation pursuant to Title 2, Division 1, Chapter 2 of the California Code of Regulations, specifically § 571 (a)(5) – Statutory Items, Holiday Pay.
  - 2) Part-Year Employment

A Fire Chief or Police Chief who commences employment at a time other than the beginning of a calendar year shall only be entitled to receive those holidays described in subpart 4 of this subsection that occur during the period actually worked.
  - 3) Effect of Unpaid Leave of Absence

A Police Chief or Fire Chief who is on an unpaid leave of absence during any holiday designated in subpart 4 of this subsection is not entitled to receive any holiday benefits for that holiday.

4) Designated Holidays for Fire Chief and Police Chief

January 1<sup>st</sup> (New Year's Day)  
Third Monday of February (President's Day)  
Last Monday of May (Memorial Day)  
July 4<sup>th</sup> (Independence Day)  
First Monday in September (Labor Day)  
November 11<sup>th</sup> (Veteran's Day)  
Fourth Thursday in November (Thanksgiving Day)  
The Day after Thanksgiving  
December 24<sup>th</sup> (Christmas Eve)  
December 25<sup>th</sup> (Christmas Day)  
December 31<sup>st</sup> (New Year's Eve)

f. PEPRA

Pursuant to the Public Employees' Pension Reform Act of 2013 (PEPRA) and notwithstanding any provision of any other City Council Resolution or Memorandum of Understanding (MOU) any new member employee, as defined by PEPRA, who is hired on or after January 1, 2013, shall be subject to the following retirement benefits:

For Non-Safety Employees

Government Code Section 7522.20 (2% @ 62 retirement formula).

Government Code Section 7522.32 (final compensation rate used to calculate pension benefit is average of member's highest annual pensionable compensation over a consecutive 36 month period).

For Safety Employees

Government Code Section 7522.25 (2% @ 50 retirement formula, maximum benefit of 2.7% @ 57).

Government Code Section 7522.32 (final compensation rate used to calculate pension benefit is average of member's highest annual pensionable compensation over a consecutive 36 month period).

SECTION 5: ADDITIONAL ASSIGNMENT PAY

The City Manager may authorize additional compensation of up to five percent (5%) over base pay to an employee who has assumed additional job duties due to a vacant position, long-term leave of absence, or a reorganization. The

duration of this additional pay shall be at the sole determination of the City Manager.

#### SECTION 6: POSITIONS EXEMPT FROM FLSA

Employees in Central Management classifications are designated as exempt from the provisions of the Fair Labor Standards Act (FLSA). Those employees who have used all their accrued leave benefits and are absent for less than one (1) day, shall not have that time treated as an absence without pay. Employees in this category shall be subject to disciplinary actions involving unpaid time off in accordance with FLSA regulations.

#### SECTION 7: ADMINISTRATIVE LEAVE

The Central Management positions listed in this Resolution shall be exempt from all overtime provisions contained in the Municipal Code or in any Memorandum of Understanding. The provisions of Administrative Leave for Middle Management will also be offered to the classifications listed in this Resolution.

#### SECTION 8: EXEMPT CENTRAL MANAGEMENT CLASSES

All classes listed in this Central Management Resolution shall be designated as exempt and be considered to be exempt from the provisions of the Municipal Code Section 2.44.390.

The appointment and removal of Department heads and the primary assistants in the City Manager's Office are governed by the Municipal Code Section 2.08.100.

#### SECTION 9: CITY AUTOMOBILE USAGE

Central Management employees may be assigned a City vehicle by the City Manager to conduct city business in accordance with the Administrative Regulations. The City Manager may, in lieu of assigning a City vehicle, provide the employee with an allowance equal to the City's budgeted equipment rental rate for a standard sedan.

Those employees assigned a City-owned vehicle to conduct City business, may also use the vehicle for private purposes in accordance with Administrative Regulations.

#### SECTION 10: SPECIAL VACATION ALLOWANCE

The City Manager, in his sole discretion, may authorize a central management employee to receive up to 80 additional vacation hours each fiscal year to recognize exceptional accomplishment and/or significant and ongoing work

beyond the scope of their position. Such special vacation shall not affect the employee's vacation accrual rate.

SECTION 11: UNIFORM ALLOWANCE

Employees may be required to wear uniforms issued by the City if so determined by their respective department director(s). The City will replace uniforms due to normal wear.

The cost of uniforms shall not constitute compensation for purposes of the regular rate calculation under the Fair Labor Standard Act. This policy shall remain in effect unless a change is dictated by applicable law.

The City shall report to CalPERS the monetary value of uniforms and uniform maintenance for those employees required to wear uniforms. The monetary value by classification is listed in Exhibit A, entitled "UNIFORM ALLOWANCE."

Uniform allowance is defined as compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain.

Adopted this 8<sup>th</sup> day of July 2014.

ATTEST:

/s/ BRUCE A. BROADWATER  
MAYOR

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS:  
CITY OF GARDEN GROVE )

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 8<sup>th</sup> day of July 2014, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, JONES, NGUYEN, PHAN, BROADWATER  
NOES: COUNCIL MEMBERS: (0) NONE  
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC  
CITY CLERK

EXHIBIT "A"

CENTRAL MANAGEMENT UNIFORM ALLOWANCE

<u>TITLE</u>	<u>REPORTED TO PERS EACH PAY PERIOD</u>
POLICE CHIEF	\$ 8.11
FIRE CHIEF	\$ 54.21