



family members/relatives from serving in a subordinate position to other family members/relatives within the City organization.

Subsequent to adoption of the nepotism policy, concerns were raised from various municipal labor organizations regarding the policy and its intended application. My understanding is that the policy was not vetted with municipal labor organizations prior to its adoption by the City Council. There are concerns as to how it will be applied to existing personnel, how it may impact promotional opportunities or possible Departmental reorganizations and how it will be applied to future hires. Finally, the issue of whether the City had a legal obligation to Meet & Confer with labor on these matters has also been raised.

At this point in time the policy is in effect as approved by the City Council. Direction has been provided to the Human Resources Department to consult with the various labor organizations to identify any and all concerns and questions, setting aside the legal question as to whether the City had a duty to Meet & Confer on the subject. While management is firmly of the belief that adoption of the policy was in full compliance with applicable law, it is in everyone's interest to insure that any outstanding issues or concerns are addressed. To the degree that there are identified unintended consequences, issues or valid concerns that necessitate changes in the policy, those will be brought back to the City Council for formal action.

#### Legal Validity of the Settlement Agreement

A Settlement Agreement between the City and former Fire Chief Dave Barlag was entered into on September 30, 2014 and is attached hereto as Exhibit B. Because the Agreement was prepared by the City Attorney's Office, it would represent a conflict to have that office report as to its legality. Consequently, attorney Alan Burns was retained as independent legal counsel for purposes of reviewing the settlement agreement. Mr. Burns has extensive experience in advising local government on a wide range of legal matters and has served for over 25 years as City Attorney for the City of Fountain Valley.

Mr. Burn's review of the settlement agreement is attached hereto as Exhibit C. Please bear in mind when reading Mr. Burns' report that its focus is strictly on the **legality of the settlement agreement** (emphasis added) and not on policy questions (e.g. was the decision to enter into the agreement a sound decision) or procedural matters (e.g. did the City follow the required process in approving the settlement agreement). The scope of Mr. Burns assignment was limited to a review of the settlement agreement as to its compliance with applicable law as requested by the City Manager per City Council direction.

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Status of Public Safety Director Barlag

The settlement agreement entered into by the City and former Fire Chief Dave Barlag does not provide insight as to specific assignments to be undertaken by the newly created position of Public Safety Administrative Officer. The approved Job Description does identify examples of duties, required skills and abilities for the position as seen in attached Exhibit D. As with all other Department Directors, the Public Safety Administrative Officer is supervised and takes direction from the City Manager. At the time the settlement agreement was executed, the City Manager provided direction to Mr. Barlag to focus on implementation of the Public Safety Facilities Master Plan (more specifically to the planned relocation of the Fire Department's Headquarters station to a new location on Euclid Street to allow for expansion of the adjoining Police Station) and the planned upgrade of the 800 MHz Public Safety Consolidated Communications System. Mr. Barlag has been working off-site on these two assigned projects since assuming the position of Public Safety Administrative Officer.

Upon the Interim City Manager's consultation with Mr. Barlag and review of his job assignments and responsibilities, additional assignments were given to take advantage of changing needs and Mr. Barlag's talents & skills. In addition to previous assignments, the Public Safety Administrative Officer has also assumed responsibility for implementation and training of personnel required under the updated municipal disaster plan, coordinate efforts with multiple departments in reviewing public safety needs in and around schools (when appropriate), coordinate efforts for a replacement facility for Fire Station #6, monitor and report on OC Ambulance franchising and a review & recommendations on significantly expanding information available to the public on Public Safety. As a result of the new assignments, the Public Safety Administrative Officer began reporting on a regular basis to City Hall on 2/1/15 to coordinate with other Departments and advise the City Manager, as required.

Consultation with the Orange County District Attorney's Office and California Attorney General's Office

Contact was initiated first with the Orange County District Attorney's Office to ascertain what role, if any, that office might play in reviewing the actions of the City in addressing the aforementioned issues. Following the initial contact, the Interim City Manager was advised that the District Attorney's Office had already initiated its own investigation, wholly unrelated to direction from the City Council for research and preparation of this report. Following the District Attorney's advisement of the investigation, they subsequently requested that the City waive attorney-client privilege pertaining to Closed Session deliberations on the hiring of the son of the previous Mayor of Garden Grove as a Fireman and the aforementioned settlement agreement. The City Council approved the

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request for the waiver at its meeting of 2/10/15 and as documented in the correspondence attached hereto as Exhibit E.

Outreach was also made to the California Attorney General's Office in accordance with City Council direction. The Attorney General's Office was very cooperative in providing information as to the role of their office in matters of this nature and what procedures they follow. Except under very unique circumstances, the Attorney General's Office defers to the District Attorney to investigate and process matters rising to the criminal level. The unique circumstances are not applicable to the issues that are the subject matter of this report. The Attorney General's Office does not look over the shoulder of the District Attorney's Office as it conducts its investigative process. At such time as the District Attorney's Office completes its investigative work and should that office decline to prosecute, the Attorney General's Office can be requested to review the decision to ascertain whether there has been any abuse of discretion. Requests to the Attorney General's Office for such a review must be filed by a member(s) of the public.

**CONCLUSION**

The preceding and the attached comprises the full scope of responses to the matters raised by the City Council. While this has been an intensive and time consuming effort, its underlying value will be if it helps to address outstanding questions in the minds of the City Council and the public on these matters.



ALLAN L. ROEDER  
Interim City Manager

Attachments:      Exhibit A – Ordinance Amending City's Nepotism Policy  
                         Exhibit B – Settlement Agreement with Dave Barlag  
                         Exhibit C – Not available at this time  
                         Exhibit D – Public Safety Administrator Job Description  
                         Exhibit E – Letter to Orange County District Attorney's Office

ORDINANCE NO. 2845

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
AMENDING THE CITY'S NEPOTISM POLICY

**City Attorney Summary**

***This Ordinance amends the regulations on nepotism in the City of Garden Grove. The Ordinance generally provides that (1) no relative of a City Council Member, the City Manager or a Department Director shall be eligible for full time employment with the City; (2) a person shall not be employed by the City if that person would be supervised by or in the chain of command of a relative; and (3) a person shall not be employed in the same department, division or facility as a relative if the job descriptions for both positions could present a conflict of interest, would involve common areas of work responsibilities or could otherwise lead to potential hazards in greater degree for relatives than for non-relatives. The Ordinance provides limited exceptions for part-time employment positions and provides that the employment of current employees is not affected by the change in the nepotism regulations.***

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Code Amendment.

Municipal Code Section 2.44.440 entitled "Nepotism Policy" is hereby amended in its entirety to read as follows:

"Section 2.44.440. Nepotism Policy.

(a) Nepotism Restrictions.

In order to minimize problems relating to employee supervision, morale, safety and security, it is necessary to regulate the employment of relatives by the City.

Applicants for City employment shall not be hired and employees shall not be placed into employee positions with respect to the following categories:

1. Where a person would be, or could in the future have a significant potential to be, supervised by or be in the chain of command of a relative;
2. Where an employee would participate in making, or advising on, employment decisions concerning a relative;

3. Where a relative of a City Council Member, City Manager, Department Director or a primary assistant of the City Manager would also be employed by the City;
4. Where a relative of a member of any City Commission would be employed in any City position over which the Commissioner would have direct or indirect influence or control; or for reasons of supervision, morale, safety or security, it is determined by the City Manager that the work involves potential conflicts of interest;
5. Where a person would be employed in the same department, division, or facility as a relative and it is determined that job descriptions or positions for both entail work that (a) could present a conflict of interest; (b) involve common areas of work responsibilities; or (3) could lead to potential hazards in a greater degree for relatives than for non-relatives.

The hiring authority shall be responsible for administering these nepotism regulations.

(b) Exception for Part-Time Employment.

1. Applicants for part-time positions of 1,000 hours per year or less who would otherwise be precluded from employment by subsection (a) may be hired on a case-by-case basis with the review and approval of the City Manager.
2. Notwithstanding the restriction of subsection (a)(3), current part-time employees falling within this category, initially hired prior to September 30, 2014, may be hired as full-time employees.

(c) Application of Nepotism Regulations.

Employees of the City who become relatives after the effective date of these provisions and do not conform to these nepotism regulations shall come into compliance with these provisions. The City will make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale.

If no reasonable effort and solution can be found to alleviate the problem of supervision, safety, security or morale, the City Manager shall determine whether, and under what circumstances, if any, both employees may be permitted to remain in their then current positions. In making such a determination, the City Manager shall give primary consideration to the operational needs of the City, including interests of

economy, efficiency and effectiveness. The City Manager shall also consider the work history and seniority of the affected employees.

(d) Definitions.

"Relatives" includes: spouse; parent (including foster); sibling (including foster and step); children (including adoptive, foster or step); in-laws; grandparent or grandchild; aunt or uncle, niece or nephew; and any other legally related person living in the same household as the employee.

(e) Notification.

Employees shall be responsible for advising their immediate supervisor if they are related or become related to another City employee, Council Member or Commissioner.

(f) Miscellaneous.

1. To the extent that hiring of a relative of a City employee is not prohibited by this Chapter 2.44, no City official or employee shall participate in making, or advising on, employment decisions of any kind concerning a relative with regard to employment in the City.
2. Nothing herein shall prevent the Mayor or Member of the City Council from voting on warrants for payment occurring in the regular course of events as part of a consent calendar on the City Council agenda.
3. No person employed by the City as of September 30, 2014, whose initial hiring would have been precluded pursuant to this Chapter 2.44 had it been in effect at the time of such hiring shall, for that reason alone, be required to leave City employment. If, however, such employee leaves City employment subsequent to September 30, 2014, this Chapter 2.44 shall apply to the rehiring of such employee."

SECTION 2: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections,

subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 3: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 23<sup>rd</sup> day of September 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 Ordinance was introduced for first reading and passed to second reading on September 9, 2014, with a vote as follows:

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

and was passed on September 23, 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



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 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.

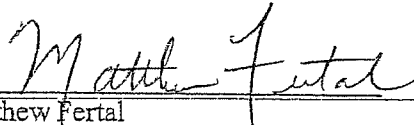
10. Revocation. Employee may revoke this Agreement for a period of seven (7) calendar days following its execution which will coincide with Effective Date. Said revocation must be in writing, must specifically revoke this Agreement, and must be received by the City's Human Resources Director, prior to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

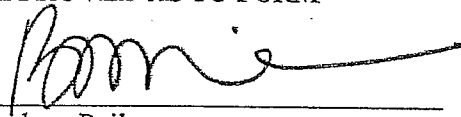
CITY OF GARDEN GROVE

EMPLOYEE

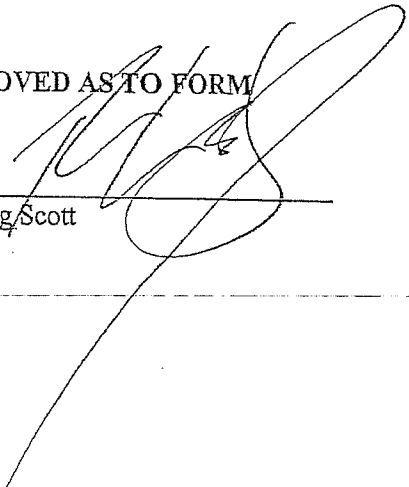
  
Matthew Fertal  
City Manager

  
David Barlag

APPROVED AS TO FORM

  
Barbara Raileanu  
Deputy City Attorney

APPROVED AS TO FORM

  
R. Craig Scott

## **CITY OF GARDEN GROVE**

### **PUBLIC SAFETY ADMINISTRATIVE OFFICER**

CLASS CODE: 570

RANGE: C255

#### **DEFINITION:**

Under administrative direction of the City Manager, will be responsible for public safety programs as assigned by the City Manager.

#### **EXAMPLES OF DUTIES:**

- Strategic planning and implementation for public safety programs;
- Provide expert consultation on a wide variety of public safety issues;
- Provide oversight of public safety facilities;
- Formulates an annual budget estimate and controls budget expenditures;
- Recommends purchase of equipment and supplies;
- Meets the public and deals with various officials and citizens in furthering the public relations of the City;
- Performs related duties as required.

#### **MINIMUM QUALIFICATIONS:**

##### **Experience:**

Seven years of increasingly responsible, full-time supervisory experience in a Fire department at the rank of Battalion Chief or higher, including one year at the rank of Fire Chief.

##### **Education:**

A master's degree with major work in Fire Science, Public Administration, Emergency Services Administration, Business Administration or related field.

***Knowledge of:***

Modern principles, practices and techniques of Public Safety administration, organization and operation, and their applicability to specific situations; advanced methods and techniques of firefighting, fire apparatus and equipment, training, first aid, and fire inspection and prevention; customer service techniques and principles.

***Ability to:***

Analyze public safety problems and plan policies and procedures; plan, assign, coordinate and direct the work of public safety programs; command the respect of subordinates and the community; conduct comprehensive administrative studies; prepare in-depth reports on operations; supervise the compilation of data and the preparation of annual budget estimates; establish and maintain effective relations with City officials, and the public; commit to providing quality customer service.

**Other Requirements:**

Must possess and maintain a valid California driver's license.

**PHYSICAL DEMANDS:**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Incumbents in this classification walk, sit, climb stairs, stoop/bend/lean, turn/twist, crouch/kneel/squat, reach above and below shoulder level, hear normal voice conversation, and use a telephone.

**WORK ENVIRONMENT:**

The work environment described here is representative of those an employee encounters while performing the essential functions of this job. Incumbents in this classification work inside, outside, around moving vehicles, on ladders/scaffolding, in direct contact with public.

**JOB FAMILY:**

Firefighter, Fire Engineer, Fire Captain, Fire Battalion Chief, Fire Division Chief, Fire Chief, Public Safety Administrative Officer.



THOMAS F. NIXON  
DIRECT DIAL: (714) 415-1012  
DIRECT FAX: (714) 415-1192  
E-MAIL: TNIXON@WSS-LAW.COM

February 12, 2015

VIA E-MAIL AND FIRST CLASS MAIL

Ebrahim Baytieh  
Assistant District Attorney  
Supervisor – Special Prosecutions Unit  
401 Civic Center Drive West  
P. O. Box 808  
Santa Ana, CA 92701

Re: City of Garden Grove

Dear Mr. Baytieh:

In response to your letter of February 6, 2015, please be advised that the City Council of the City of Garden Grove has agreed to waive the attorney-client privilege as to the Orange County District Attorney's Office investigation of allegations of Brown Act violations and other possible criminal misconduct relating to (1) the hiring of the son of the previous mayor of Garden Grove as a Fireman for the City of Garden Grove, and (2) the settlement agreement that Garden Grove entered into in 2014 with the previous Garden Grove Fire Chief, to include any discussions relating to these two above listed areas in closed session meetings of the Garden Grove City Council.

Please be advised that to the extent that other privileges or confidentialities may apply, including but not limited to, such matters as confidential personal information otherwise protected by law from disclosure, such protections may still be applicable.

Please direct any specific requests to me at your convenience.

Very truly yours,

THOMAS F. NIXON  
City Attorney  
City of Garden Grove

cc: Allan L. Roeder, Interim City Manager  
City Council