RESOLUTION NO. 2025-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A CALPERS RETIRED ANNUITANT IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 7522.56 AND 21221(h)

WHEREAS, in compliance with Government (Gov.) Code section 7522.56 of the Public Employees' Retirement Law, the City of Marina must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

WHEREAS, Doug McCoun retired from the City of Marina in the position of Fire Chief, effective December 31, 2024; and

WHEREAS, Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 30, 2025, without this certification resolution; and

WHEREAS, Gov. Code 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 of Marina and Doug McCoun certify that Doug McCoun has not and will not receive any retirement-related incentive; and

WHEREAS, an appointment under Gov. Code section 21221(h) requires the retiree is appointed into the interim appointment during the recruitment for a permanent appointment; and

WHEREAS, the governing body has authorized the search for a permanent appointment; and

WHEREAS, the City of Marina hereby appoints Doug McCoun as a retired annuitant to the vacant position of (Interim) Fire Chief for the City of Marina under Gov. Code section 21221(h), effective January 27, 2025; and

WHEREAS, this Gov. Code section 21221(h) appointment shall only be made once and therefore will end on December 30, 2025; and

WHEREAS, the entire employment agreement, contract or appointment document between Doug McCoun and the City of Marina has been reviewed by this body and is attached herein; 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, the maximum base salary for this position is $19,843 and the hourly equivalent is $114.48, and the minimum base salary for this position is $11,622 and the hourly equivalent is $67.05; and

WHEREAS, the hourly rate paid to Doug McCoun will be $106.46; and

WHEREAS, Doug McCoun has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

WHEREAS, sufficient funding is included in the FY 2023-25 budget and contained within the General Fund, Fire Department budget, and Salary accounts.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Certify the nature of the employment of Doug McCoun as described herein and detailed in the attached employment contract and that this appointment is necessary to fill the critically needed position of Interim Fire Chief for the City of Marina by January 27, 2025 due to the critical nature of the duties and responsibilities associated with the position of Fire Chief and the requirement to ensure that such are continued to be applied until a new, full-time replacement may be recruited, it is necessary and most efficient for Mr. McCoun to return, on a temporary basis until recruitment and/or orientation is completed, and;

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on January 21, 2025, by the following vote:

AYES: COUNCIL MEMBERS: McCarthy, Biala, Visscher, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: McAdams
ABSTAIN: COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

____
Anita Sharp, Deputy City Clerk

EXHIBIT A

CITY OF MARINA EMPLOYMENT AGREEMENT – RETIRED ANNUITANT
TO PERFORM SPECIALIZED AND TEMPORARY SERVICES

This agreement is entered into January 27, 2024 by and between the CITY OF MARINA, a municipal corporation, hereafter referred to the "City" and Retired Annuitant Douglas McCoun, hereafter referred to as "Employee".

WHEREAS, the current critical vacancy of a Fire Chief in the Fire Department, the City is in immediate need of a temporary employee to perform the services of a Fire Chief; and

WHEREAS, Doug McCoun possesses the requisite specialized skills and institutional knowledge needed by the City and is available to provide services as Fire Chief, no later than December 30, 2025 or upon the successful completion of the the recruitment and transition of the new Fire Chief, whichever comes first; and

WHEREAS, Doug McCoun as a Public Employees Retirement System ("PERS") annuitant, is limited in their ability to accept public employment pursuant to Government Code Sections 21224(A); and

WHEREAS, Doug McCoun is able to provide temporary services to the City of Marina under the terms of this Agreement and within the constraints of Government Code Section 21224(a) as a PERS annuitant and City desires to hire Doug McCoun on these terms to provide specialized services of a limited duration, which is not anticipated to exceed twelve (12) months.

NOW THEREFORE, in consideration of the above stated desires and the mutual covenants, terms and conditions, herein contained, the parties hereto mutually and freely agree as follows:

<u>SECTION 1 – EMPLOYMENT CONDITIONS AND DUTIES</u>

a. Employee is appointed by and shall serve at the pleasure of the City Manager. Employee has performed their due diligence to confirm with PERS that they may accept this temporary appointment as a PERS annuitant.

b. The Employee shall be responsible for performing duties of the Fire Chief position and other duties and special projects as assigned.

<u>SECTION 2 – EMPLOYMENT TERM</u>

a. The City agrees to employ Employee and Employee agrees to be employed and remain in the employment of the City for a term beginning January 27, 2025, and ending not later than December 30, 2025 or upon the successful completion of the the recruitment and transition of the new Fire Chief, whichever comes first. This is an at-will position and Employee has no property interest in the position.

b. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the rights of the City to terminate the services of the Employee at any time during such employment terms or any renewal thereof subject to the provisions as set forth in this agreement.

c. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right to resign at any time from this position with the City, subject to the provisions as set forth in this agreement.

SECTION 3 – EMPLOYEE RESIGNATION

In the event the Employee terminates this Employment Agreement by voluntary resignation, in writing, before expiration of the employment terms or any renewal(s) thereof Employee shall not be entitled to any severance pay but shall be entitled to payment in full for consideration during pay period. In the event that the Employee voluntarily resigns this position before normal expiration date of the employment terms or any renewal they shall give the City at least ten (10) days advanced written notice unless the parties agree otherwise. The Employee, should they resign, shall be paid for any earned salary to which they may be entitled as of the final day on City payroll.

SECTION 4 – EMPLOYMENT TERMINATION

Employee serves in an at-will capacity as Fire Chief in Fire Departmtent, assigned to assist the department during the period of time stated in this agreement. The City may terminate or remove the Employee with or without cause.

SECTION 5 – WORK HOURS

The City Manager shall coordinate the work schedule based upon needs of the City.

SECTION 6 – SALARY

The City shall pay the Employee for all services rendered and worked pursuant to this agreement at $106.46 per hour, which represents the annual salary of the Fire Chief position, divided by twelve months and divided again by 173.333, as required by Government Code Section 21224(a). Employee's salary will be paid on a bi-weekly basis in conformance with the City's established pay periods and pay days; although Employee is required by Government Code Sections 21224(a) to be compensated on an hourly basis. The Employee shall not receive benefits, incentives or compensation in lieu of benefits, sick leave, holiday, vacation pay or any other form of compensation in addition to the hourly rate during his employment under this employment agreement.

SECTION 7 – INDEMNIFICATION

If the employee is named as a party in litigation relating to Employee's actions or inactions as a City employee, the City shall defend Employee and pay any judgment which may be entered against Employee, consistent with the terms of applicable law including Government Code 810 et seq.

SECTION 8 – ENTIRE AGREEMENT AND AMENDMENTS

a. This agreement supersedes any and all other agreements between the parties hereto with respect to the employment of the Employee by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducement, promise, or agreements have been made by any party or anyone acting on behalf of any party orally or otherwise which are not embodied herein.

b. No other agreement, statement or promise not contained in this Agreement shall be valid or binding or shall be used in interpreting the meaning of this Agreement.

c. Amendments, modifications or changes may be made to this Agreement and shall become effective on the date contained therein when executed in writing and mutually signed by both parties to this Agreement.

d. This Agreement and any amendments, modifications or changes thereto shall be binding upon the City during its term.

e. This Agreement and any amendments, modifications or changes thereto shall be binding upon the Employee and inure to the benefit of the heirs at law and executors of the Employee.

SECTION 9 – SEVERABILITY

If any provision or any portion hereof is held to be unconstitutional invalid or unenforceable, the remainder to this Agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.

“EMPLOYEE"	“CITY”
______________________________	______________________________
Doug McCoun	Layne Long, City Manager

January 21, 2025 Item No. **13d**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 21, 2025

CITY COUNCIL TO CONSIDER APPROVING EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A CALPERS RETIRED ANNUITANT IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 7522.56 AND 21221(h)

RECOMMENDATION:

It is recommended that the City Council:

1. City Council consider adopting Resolution No. 2025-, authorizing the appointment of Doug McCoun, as a retired annuitant to the vacant position of Interim Fire Chief.

BACKGROUND:

Government Code Section 7522.56 requires retired annuitants to be separated from employment for at least 180 days before returning to work for an employer in the same retirement system from which they receive a pension. An exception may be made in certain situations, if the governing body adopts a resolution to waive the waiting period for separation. The waiver allows an employer to appoint a retiree to positions such as an interim Fire Chief and other unique managerial or executive positions.

Additionally, the exception to the 180 day, indicates the retired annuitant employment must meet all the requirements from CalPERS. Requirements include, before the date of hire, the employer must have in place an active recruitment for a permanent replacement for the vacant position, the work must be for a limited duration, the appointment can only be made once to the vacant position, compensation cannot be less than the minimum or exceed the maximum for the vacant position as listed on the employer's publicly available pay schedule and the retired annuitant cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. Lastly, The appointment must be approved by the employer's governing body, in a public meeting, and must be approved as an action item, rather than on a consent calendar.

ANALYSIS:

Government Code Section 21221(h) allows the governing body of a public agency to appoint a retiree to a vacant position during the recruitment to permanently fill the vacancy or during an emergency to prevent stoppage of public business. The previous Fire Chief retired on December 31, 2024. The City will retain an external recruiter to assist with the open recruitment process. A lengthy vacancy could cause a lapse in Fire Chief duties and does not allow a transition period for a new Fire Chief. In addition, the Fire Department duty chief coverage would have a lapse in coverage for a significant time period, creating a hardship for the department, as Fire staff would need to schedule the additional coverage hours.

Pursuant to Government Code section 7522.56 the City must provide CalPERS a certification resolution when hiring a retiree before 180 days has passed since the incumbents retirement date. The employment agreement must be reviewed by the governing body (“**EXHIBIT A”**).

Due to the critical nature of the duties and responsibilities associated with the position of Fire Chief and the requirement to ensure the continued operational service to the community until a new full-time replacement may be recruited, it is necessary and most efficient for Doug McCoun to return on a temporary basis in a retired annuitant capacity. The Retired Annuitant position is a non-benefited position limited to 960 hours per fiscal year. The duration of the contract position will be up to (12) twelve months with a termination date of December 30, 2025. Should the recruitment and transition process be completed prior to this date or the limited hours be reached, the contract may end prior to this termination date. Staff is recommending the City Council's authorization to have Doug McCoun appointed into the Interim, Fire Chief position, to work on a temporary basis.

FISCAL IMPACT:

Should the City Council approve this request, there is adequate funding in the FY 2023-2025 Budget and is contained in the General Fund, Fire Department budget, and Permanent Salaries;

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

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Belinda Varela,
Director, Human Resources and Risk Management
City of Marina

REVIEWED/CONCUR:

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Layne P. Long
City Manager
City of Marina