

Meeting Minutes for 10/31/16

A Special Meeting (Open Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Monday, October 31, 2016, at 8:00 A.M., at the Community Center, Room 3, 59 Arlington Ave., Kensington, California.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Simon Brafman
Patricia Gillette, Director	Linda Lipscomb
Chuck Toombs, Director	Skye Dent
	Trisha Mindel
	Mabry Benson
	A. Stevens Delk
	David Spath
	Kay Reed
<u>Staff Members</u>	
Lynn Wolter, District Administrator	
<u>Press</u>	

President Welsh called the meeting to order at 8:03 A.M. President Welsh, Director Toombs, and Director Gillette were present. Vice President Sherris-Watt and Director Cordova were absent.

1. The Board of Directors met to discuss the possibility of authorizing Kevin Hart to serve as General Manager of the District, as an independent contractor, from November 1, 2016 to November 14, 2016, at 8:00 A.M. The Board considered voting on providing such authorization. Compensation was not discussed or decided upon, as this would not be done until the November 10th Regular Open Session of the Board.

President Welsh explained the reason for the meeting: The Board had learned from its attorneys, just prior to its meeting on October 26, 2016, that it couldn't discuss compensation for a CEO at a Special Meeting – it would have to wait until the Board's November 10, 2016 Regular Meeting to do so. He explained that this left a gap between this day, the last day of IGM/COP Hart's active employment, and when Kevin Kyle could enter into contract and take office: November 11th. He said that the Board had passed a resolution to move forward with entering into a contract on November 10th but that he didn't think it would be responsible to leave the community without a General Manager for any length of time. He said he had checked with legal counsel and they had said the Board could authorize IGM/COP Hart to continue on as General Manager only – but not as General Manager/Chief of Police. He explained that IGM/COP Hart would continue on as a general contractor for the balance of the week, six hours a day, and then for five working days the following week, six hours a day. He said that IGM/COP Hart would also be on call for emergencies during non-business hours and that the proposed rate of pay would be \$69.71 per hour, though he couldn't guarantee any compensation unless the Board approved it

on November 10th. He said that IGM/Hart had said he was willing to take the risk of the Board possibly not approving the hourly rate of pay. President Welsh said that the attorneys had said this was legal and that he thought it was the responsible thing to do. President Welsh said that part of what had given him the idea for this was the situation in which the District had found itself when IGM/COP Hart had taken office in Kensington: He could not be sworn in as Chief of Police until he had passed his background check, which had taken several weeks to complete. President Welsh said that IGM/COP Hart had started as GM only and Master Sergeant Hull had, essentially, been acting Chief though he could go to IGM/COP Hart for consultations because of his depth of experience. He said that, as it had been then, Master Sergeant Hull would be acting Chief but would consult with IGM/COP Hart as needed. He noted that the email contained in the Board Packet would serve as the proposed agreement.

Director Gillette asked President Welsh how he had come up with the hourly fee amount. President Welsh responded that this was IGM/COP Hart's annual salary converted to an hourly amount. She asked if this amount made sense since he wouldn't be doing the entire job. President Welsh responded that this had been the amount IGM/COP Hart had been paid when he had started and had been working only as the GM and added that IGM/COP Hart would still be on call for emergencies. Director Gillette thanked President Welsh for thinking of a creative solution to the issue and said the community owed him a debt of gratitude – otherwise, the community would have been without a GM for the first two weeks of November. Director Gillette asked how President Welsh had come up with six hours a day. President Welsh responded that this was an interim measure and so didn't think it would be necessary to have him on call eight hours a day.

President Welsh said he thought that, in the third paragraph, there needed to be an addition that said IGM/COP Hart would act in the same capacity as he had when he had first been hired, which had been as GM only. He clarified that Master Sergeant Hull would be acting Chief, consulting with IGM/COP Hart as needed. A. Stevens Delk suggested that "Rickey Hull" should be changed to "Master Sergeant Hull" in the proposed document.

Simon Brafman noted that the Board was essentially doing a bifurcation. He congratulated the Board on its moving in that direction.

Skye Dent said that she fully supported IGM/COP Hart on this but that she was opposed to Master Sergeant Hull being in this position. She said he had treated her unprofessionally, unfairly, and in a sexist manner. She explained that this was tied to an ongoing incident with which she had been dealing. She said she wanted to make sure that her complaints about Master Sergeant Hull were not accessible to him and noted that Chief Hart was investigating them. President Welsh responded that confidentiality would be strictly enforced and that, even as acting Chief, Master Sergeant Hull would not have access to things to which he should not have access.

Mabry Benson said she was disturbed that the Board had known about IGM/COP Hart leaving since September 1st and that there had been nothing about it on the September agenda or on the October 13th agenda. Thus, she said there had been two rushed meetings in a row. She said people had questioned the legalities, and she asked if the Board had received a written legal opinion. President Welsh responded in the affirmative. She asked about liability, and President Welsh responded that he would address it. Ms. Benson said that GMs went on vacations or were incapacitated and questioned the rationale for needing someone for this two-week period. She said that Master Sergeant Hull should do it and that a GM's work shouldn't take six hours a day.

A. Stevens Delk said that, according to IGM/COP Hart's comments in the Outlook, his GM duties required only 10% of his time and that this would equal only four hours per week. She said it was strange that the Board was considering six hours per day. She asked if there were specific things the Board wanted IGM/COP Hart to do and if they were urgent. She asked if IGM/COP Hart would be paid to attend meetings or if staff could do this. She said Master Sergeant Hull did a masterful job of filling in for former GM/COP Harman numerous times – both as GM and COP. She said there was also the administrative assistant. She said that the resolution stated that the District didn't have available or qualified existing staff to fill the GM/COP role on anything other than a short-term basis. She asked if

two weeks wasn't short. She said that a combined GM/Secretary position would be legal and there was already someone serving as the District's secretary. She asked if IGM/COP Hart would be paid for his commute time. She said that this time might be needed for IGM/COP Hart to clear his desk because he had spent so little time on his GM duties. She concluded by asking about the necessity of this "sweet heart deal." A copy of Dr. Delk's comments is included in the December 8th Board Packet, under correspondence.

Kay Reed said that she wanted to commend the Board for the good state of the District, based on facts and data. She said that, based on FBI statistics, Kensington was safer than its surrounding neighbors. She noted that the 2010 LAFCO Report showed that Kensington' response times, relative to other communities – especially El Cerrito – were nearly twice as fast. She said these things had made Value Penguin rate Kensington the fifth safest community in the state. With respect to finances, she said the decisions the Board had made had left the District with a surplus of over \$220,000, reserves of \$1.28 million, and set-asides for things such as renovating the Youth Hut, as of June 30, 2016. She commended the Board for the MOU, which had resulted in slowing the rate of growth in officer compensation. She also commended the Board for its approach to governance. She cited the Ad Hoc Governance Committee for which each Director had appointed two people and, thus, a wide range of voices had come together to produce its report. She also noted that the Board had engaged in good transparent government. She said the twelve members of the Finance Committee had met regularly for many years, and she noted that there were people with wide-ranging perspectives serving on that Committee. She thanked all the Directors, including the two who had not attended, and thanked staff. A member of the public said that, because these comments had not been about the agenda item, they should not have been allowed. President Welsh said he had not realized until Ms. Reed was finished that her comments would not pertain to the item.

Skye Dent said she wanted to reiterate her support of IGM/COP Hart. She said that she didn't think this was a lot of money and that IGM/COP Hart was doing this to help the community. She said that IGM/COP Hart had been paid less than he had bargained for and that he was a very ethical person. She concluded by saying the community should thank him for giving it these two weeks.

David Spath said he agreed that this was a good idea, that it was a short term, and that what had been proposed was up to six hours per day. He said that one thing he would caution about was that, if a grievance had been brought against Master Sergeant Hull, it would – according to the Board's Policy and Procedures Manual – go first to the Chief and then to the Board: The GM wouldn't get involved. Therefore, he said the Board should delay action on it until the new IGM/COP took over. He concluded by saying this proposal was a wise thing to do.

Linda Lipscomb said she, too, wanted to commend the Board for taking this action. She said this had become a "tempest in a teapot;" noting that this would be a two-week continuation of a man who had served the community commendably, and the amount being discussed was very low for this kind of service. She also noted that, by law, special districts were required to have a GM. She said that, although she hadn't been a fan of bifurcation, she wanted to keep an open mind about it and this would be an opportunity to see how it might work. She said she wanted to echo Ms. Reed's comments about how well the District was doing. She thanked the Board and asked them to thank IGM/COP Hart, noting that he had taken an insufferable amount of "hits and pummeling" from public comments during his tenure in Kensington.

A. Stevens Delk asked if commute time would be billable. President Welsh responded that IGM/COP Hart had been willing to do this work for free.

Trisha Mindel asked why there were objections to the two weeks and why Board wouldn't avoid a vacancy if it could. She said Dr. Delk had made a good point about the duties. She said that she had had conversations with IGM/COP Hart about what a GM's duties might look like. She said that this might afford the opportunity to come up with a focused list so there would be a better understanding of what the positions would look like if the GM/COP position were to be split. She said that being on call was a huge thing and that it was not a large amount of money.

Director Gillette said that IGM/COP Hart had a lot of history with the District and that she didn't think there would be a clean separation of GM and COP duties. She said he would need to advise Master Sergeant Hull and the incoming IGM/COP. She said IGM/COP Hart could be required to track how he spent his time: This could be a way of learning about what things occupy his time. She said that commute time would not be paid and that this was a creative solution. She said that it would be up to six hours and that the Board would expect him to be efficient.

President Welsh said that he thought it would be better to gather data about how time was spent from the incoming IGM/COP because two weeks wasn't much time. He noted that IGM/COP Hart had explained that many of his duties were inseparable. He added that, if one looked at the unique situation in Kensington, there was a lot of overlap: It was the way the District had been conceived from the outset.

A. Stevens Delk asked if GM/COP Hart had helped to write the recently posted job description. President Welsh and Director Gillette responded that Vice President Sherris-Watt had written it. Dr. Delk said that about 60% of the bulleted items were specific for COP and 40% were specific for GM, which she said would correlate to time expenditures. Director Gillette noted that the job description came from the Policy and Procedures Manual. President Welsh responded that the GM/COP supervised nine full-time officers and two part-time non-sworn employees. He noted that the District Administrator was the only employee not performing police-related duties. Thus, he said, this suggested that this was a better gauge of how the GM/COP's time was spent.

David Spath said that, when the Ad Hoc Committee had researched officer dismissal, it was the COP who would make the recommendation, but it was the GM who would dismiss.

A. Stevens Delk said that the government code indicated that the Board would appoint a GM and that there could be a combined position of GM and secretary. Linda Lipscomb responded that the term "secretary" meant something different from the District Administrator: It was an officer position, not a staff position.

Mabry Benson asked what the Board would do if there were a vacancy. President Welsh responded that this situation had come about because he had made a mistake. He had thought the Board could enter into a contract with Kevin Kyle at the Special Meeting the Board had held the prior week. Because that couldn't happen, it had created an unplanned gap. Kay Reed said that an emergency plan was needed, and she suggested that, perhaps, IGM/COP Hart could develop one during the upcoming two weeks. Director Gillette said this was a good idea.

Director Gillette said she was disappointed the Vice President Sherris-Watt and Director Cordova had been unable to attend the meeting and she noted that Director Cordova had been able to participate from Italy for the prior four meetings.

MOTION: Director Gillett moved, and Director Toombs seconded, that the Board adopt the proposed contract that was attached to the agenda, with some modifications: 1) that the document refer to Master Sergeant Hull, not Rickey; 2) that there be words indicating that Master Sergeant Hull would be acting Chief; 3) that, in that same paragraph – paragraph three, there be words indicating that IGM/COP Hart would be acting in the same capacity as when he had first been hired and; 4) that he keep time sheets for the tasks on which he worked. She said she also wanted him to address what should happen in the event of a vacancy. President Welsh noted that, in paragraph five, November 5th should be changed to November 4th and that, in paragraph two, it should indicate, until November 14th until 8:00 A.M.
Motion passed 3 – 0.

AYES: Welsh, Gillette, Toombs NOES: ABSENT: Sherris-Watt, Cordova

Director Gillette thanked President Welsh for coming up with a creative solution in a timely manner.

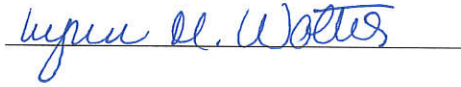
**MOTION: Director Gillette moved, and President Welsh seconded, to adjourn.
Motion passed: 3 – 0.**

AYES: Welsh, Gillette, Toombs NOES: ABSENT: Sherris-Watt, Cordova

The meeting was adjourned at 8:44 A.M.



Len Welsh
KPPCSD Board President



Lynn Wolter
District Administrator