



A G E N D A

CITY OF SEASIDE
CITY COUNCIL/SUCCESSOR
AGENCY TO THE
REDEVELOPMENT AGENCY

SPECIAL MEETING
440 HARCOURT AVE (COUNCIL CHAMBER)
Tuesday, May 14, 2024
5:00 PM

NOTICE: *The City Council will hold its public meetings in person, with options for viewing and listening virtually or telephonically, based on availability.*

1. To view this meeting: Please click on the following link to the City of Seaside YouTube Channel: <https://www.youtube.com/c/CityofSeasideCalifornia>
2. To view this meeting: Using the Zoom application on your smart phone, laptop, tablet or desktop and click on this link: <https://ci-seaside-ca-us.zoom.us/j/81936832059>
WEBINAR ID: 819 3683 2059
3. To listen by phone: Please call (669) 900-9128
Enter the meeting ID 819 3683 2059 when prompted. There is no participate code – press the pound sign # after the recording prompts you.
4. To make public comment, the following options are available:

Before the Meeting via Email: Written comments can be emailed to CityClerk@ci.seaside.ca.us Include the following subject line: "Public Comment Item #____" (insert the agenda item number relevant to your comment). Written comments must be received by 2:00 p.m. on the day of the meeting.

During the Meeting via Oral Comments: When the Chair calls for public comment, members of the public participating in person and wishing to address the City Council may approach the podium when the Chair calls for public comment.

1. **CALL TO ORDER**
2. **ROLL CALL – ESTABLISHMENT OF QUORUM**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT**

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three (3) minutes. Public Comments for "Presentations" on this agenda are also taken at this time; comments on specific agenda items are heard under that item. For the public record, please state your name.

5. PUBLIC HEARING

A. CITY MANAGER REQUEST FOR HEARING PURSUANT TO SEASIDE MUNICIPAL CODE 2.04.080 AND NOTICE OF INTENDED REMOVAL AND TERMINATION DATED APRIL 18, 2024

RECOMMENDATION: Open hearing, take any information presented under consideration. Attached are relevant documents.

6. ADJOURNMENT

Next Regularly Scheduled Meeting:
May 16, 2024
5:00 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. Agendas are posted at:

<http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 5.A.

TO: City Council

DATE: May 14, 2024

SUBJECT: CITY MANAGER REQUEST FOR HEARING PURSUANT TO
SEASIDE MUNICIPAL CODE 2.04.080 AND NOTICE OF INTENDED
REMOVAL AND TERMINATION DATED APRIL 18, 2024

RECOMMENDATION

Open hearing, take any information presented under consideration. Attached are relevant documents.

ATTACHMENTS

1. Request for hearing
 2. Notice of Intended Removal and Termination
 3. L-Notice of Hearing
 4. Employment Agreement - City Manager
-

04/25/24

Notice of Request for Hearing

To: Dominique Davis
City Clerk

From: Jaime M. Fontes 

Per Seaside Municipal Code Section 2.04.080 I request a hearing before the City Council as outlined in your notice of 04/18/24.

8:30 am

Received

APR 26 2024

City Manager's Office

Dominique Davis
(confidential)



OFFICE OF THE CITY MANAGER

440 Harcourt Avenue
Seaside, CA 93955
www.ci.seaside.ca.us

Telephone 831-899-6700

May 7, 2024

VIA EMAIL: [REDACTED]

Jaime N. Fontes
[REDACTED]

RE: Notice of Intent of Removal and Termination and Hearing pursuant to SMC
2.04.080

Dear Mr. Fontes:

Please be advised that the hearing you requested on April 26, 2024, will be held on May 14, 2024, starting at 5:00 p.m., as a special meeting of the City Council. In accordance with your email request to me dated April 29, 2024, the hearing will be conducted in open session.

Please note that this hearing is afforded under the Municipal Code, even though the Notice of Intent of Removal and Termination indicates a "not-for-cause" removal and is consistent with your Employment Contract. Accordingly, this hearing will be an opportunity for you to provide information for the City Council's consideration prior to the Council's final vote on your removal (currently set for its regular meeting on June 6, 2024.) There will be no right to call witnesses or to use any other evidentiary-type hearing procedures, because they are not required under the Municipal Code, the terms of your employment agreement, or as a matter of due process.

Please be reminded that as a current City employee, you and your representatives are bound by both applicable law and the City's rules, regulations, policies, and practices, which require strict adherence to and preservation of the City's attorney-client privilege protections, prohibit disclosure of closed session documents and discussions, and protect the confidentiality and privacy of City personnel information. The City Council has not currently waived any of the protections afforded it pursuant to the Brown Act or any other state or federal law.

Upon conclusion of your information, and completion of any public comment (conducted per usual City practice), the Council will take all information presented under consideration. If the City determines that you have raised any issues for which the Council determines that additional investigation or follow up is warranted, we will proceed accordingly.

Sincerely,

Nicholas Borges,
Acting City Manager

Cc: City Attorney
Algeria Ford, Burke, Williams & Sorenson
Katy Suttorp, Burke, Williams & Sorenson
City Council

Include, Innovate, Inspire



NOTICE OF INTENDED REMOVAL AND TERMINATION DATE

In accordance with your contract and Seaside Municipal Code Section 2.04.070, the City Council has voted to initiate the removal process to terminate your employment as City Manager as of 4/18/24 [insert date].

After careful consideration of currently available information, the Council has voted that the termination will be:

- ☐ For cause _____ [Insert Cause]
- ☒ Not for cause: loss of Confidence [Insert reason: eg, loss of confidence and/or differing visions for the City's organizational direction]

Further, Seaside Municipal Code Section 2.04.090, permits the Council to place you on paid administrative leave following your notice of intended removal.

Please be advised that the Council have voted:

- ☒ You are being placed on paid administrative leave effective immediately. The Termination of your contract will be on or about 4/6/24 **at the Council's regular meeting and your termination date will be the next day**, unless you decide to resign prior to that time. You are to turn in all City property/assets (keys/phone/laptop/files) and to not contact staff or otherwise access the City's premises except as a member of the public. The point of contact for the City for any issue relative hereto or coordination on statements, except as outlined below, will be Chief Borges at 831-899-6700.

- ☐ You are not being placed on paid administrative leave at this time and are expected to continue to perform your duties of City Manager until further notice.

You are notified that pursuant to Seaside Municipal Code section 2.04.080 that within seven (7) days of this notice April 26, 2024 by 9:00 a.m., you may by written notification to the City Clerk request a hearing before the City Council, which will be set before the termination date set forth above. You may have this hearing in closed or open session if you so choose.

Date:

4/18/24

Ian N. Oglesby, Mayor

I acknowledge receipt of this notice.

Date:

4/18/24

Signature: [Signature]

**CITY OF SEASIDE
CITY MANAGER EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made and entered into this 16th day of June, 2022, between JAIME FONTES (hereinafter "FONTES") and the City of Seaside, a municipal corporation of the State of California, and other related entities of the City of Seaside (hereinafter "CITY"), collectively hereinafter referred to as "PARTIES", and is based on the following facts:

- A. CITY requires the services of a City Manager to assist the CITY on a full-time basis to conduct the day-to-day business of CITY.
- B. FONTES is willing and qualified to provide such services due to his experience, training, and education.

NOW THEREFORE, it is hereby mutually agreed by and between the PARTIES as follows:

SECTION 1. TERM, UNDERSTANDING, AMENDMENT

- A. The term of this Agreement shall commence upon the signature of both PARTIES and continue for a period of three (3) years unless terminated pursuant to SECTION FOUR of this Agreement. FONTES agrees to begin work as City Manager on July 1, 2022.
- B. The PARTIES recognize and affirm that:
 - 1. FONTES is an "at-will" employee whose employment may be terminated by the City Council without cause; and
 - 2. There is no express or implied promise made to FONTES for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between FONTES and CITY.
- C. The PARTIES may, upon mutual consent and agreement, amend the terms of this Agreement. No amendment shall be in effect unless it has been reduced to writing and approved by FONTES and the City Council.
- D. The City Council shall evaluate FONTES' performance at least annually. FONTES will be evaluated after his first 6 months on the job and after that at least annually. As part of each annual performance evaluation FONTES shall submit a written statement of accomplishments for the preceding year, and planned work objectives for the forthcoming year, to the City Council prior to the performance evaluation meeting.

SECTION 2: DUTIES

- A. CITY agrees to employ FONTES as City Manager of the CITY to perform the functions and duties specified in the ordinances and resolutions of CITY and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.

- B. FONTES shall perform all duties in accordance with the highest professional and ethical standards of the profession and shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders established by CITY.
- C. FONTES shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this agreement and annually thereafter, FONTES must complete disclosure forms required by law.
- D. FONTES shall not, without the City Council's prior written consent, render to others services of any kind for compensation or engage in any other activity that would materially interfere with his performance of his duties under this Agreement.
- E. FONTES agrees to diligently carry out the work to be done under this Agreement and understands that in the performance of this Agreement, FONTES' availability and responsiveness are critical.
- F. FONTES represents that he has the professional skills necessary to perform, and that he will perform, the services in a skillful and professional manner. FONTES agrees that the services shall be performed in a manner consistent with practices usual and customary to the management of local government.

SECTION 3: COMPENSATION FOR SERVICES PERFORMED

In return for performing the duties and responsibilities outlined in this Agreement, CITY agrees to compensate FONTES as provided herein:

A. SALARY:

1. CITY shall pay a monthly wage of \$20,833.33 per month gross pay. The sum shall be the total of \$250,000 regular annual salary and \$17,500 deferred compensation annually, and FONTES may determine, annually, to receive any portion of deferred compensation as regular salary. This position is exempt under the Fair Labor and Standards Act (FLSA) and therefore FONTES will not be paid overtime compensation for any hours worked in excess of forty (40) hours per week. Payment for performance of services rendered will occur on a bi-weekly basis at the same time as regular employees of the City. Taxes and other legally required deductions will be deducted from FONTES' compensation under this agreement.
2. It is recognized that FONTES must devote a great deal of time outside normal business hours to the business of CITY, and to that end FONTES will be allowed to take reasonable compensatory time off as he shall deem appropriate during normal business hours. However, it is the intent of the City Council that FONTES customarily maintains normal CITY business hours. FONTES may undertake limited consulting, teaching, writing or other such opportunities outside normal business hours, so long as the opportunities in no way conflict with his employment as City Manager and are preceded by notice to CITY.

- B. SALARY ADJUSTMENT: CITY may adjust FONTES' salary at a consistent percentage granted other management employees of CITY. All such increases in salary may occur six months after granted to other management employees while any future decrease to any employee group shall occur at the same time other employees are impacted. Any salary adjustment will occur at a regularly scheduled City Council meeting.
- C. VEHICLE ALLOWANCE: CITY shall pay an automobile allowance of \$400 per month for local transportation needs. FONTES is responsible for all fuel, maintenance and insurance in the use of his personal vehicle for local travel. Transportation needs beyond local travel will be reimbursed separately. As an alternative, CITY, as mutually agreed with FONTES, may provide a CITY vehicle for FONTES' use in his capacity as City Manager.
- D. SUPPLEMENTAL BENEFITS:
1. CITY shall provide the same type and extent of health, hospitalization, surgical, vision, dental and comprehensive medical insurance benefits for FONTES and his dependents as provide to CITY'S other Executive Management employees as such benefits may be amended from time to time.
 2. FONTES shall accrue vacation leave at the rate provided any other CITY non-safety employee. FONTES will accrue up to 20 days per year, depending on years of service, which may be paid for unused time.
 3. FONTES shall accrue sick leave on a monthly basis at the highest rate provided any other CITY non-safety employee through his first 24 months; thereafter he shall accrue sick leave at half the highest rate provided to other CITY non-safety employees.
 4. Upon resignation or termination of FONTES will be compensated for all accrued vacation time and management leave to the date of termination or resignation.
 5. CITY shall provide FONTES long-term disability coverage. FONTES shall pay any employee contribution at the same level as other management employees.
 6. CITY shall provide FONTES with term life insurance in the amount of two (2) times FONTES' annual salary including all increases in FONTES base salary, provided however, that FONTES comply with the qualifying terms of the policy. FONTES shall pay any employee contribution at the same level as other management employees.
 7. CITY shall enroll FONTES in the CalPERS retirement system based on FONTES' status with CalPERS and shall make the employer contributions. FONTES shall pay any employee contribution at the same level as other management employees.
 8. FONTES shall receive forty (40) hours of administrative leave which has no cash value and 40 hours of management leave annually. Management leave may be cashed out at his option in accordance with established administrative procedures.

8. a. FONTES will receive a one-time sum 80 hours of administrative leave upon his start date of employment to be used in the first 18 months of employment. He will forfeit any of the 80 hours he does not use during his first 18 months.

9. For up to one year, CITY shall pay a temporary monthly housing reimbursement of \$1,666.67 to assist FONTES in moving, relocating to and living in the City.

10. For establishing temporary and permanent housing, including moving contents of FONTES' current home [more than 50 miles away], CITY shall pay the actual costs of moving not to exceed \$12,500 upon provision of receipt from the lowest of three qualified bids.

11. CITY agrees to pay for reasonable city-related business expenses incurred by FONTES in accordance with CITY policy.

12. CITY agrees to furnish FONTES with a computer, smartphone, and software for his use in performance of his job-related activities.

13. CITY shall pay such professional dues, subscriptions and memberships in such organizations as FONTES shall determine necessary to maintain professional relationships in appropriate national, regional, state and local associations as deemed desirable for continued professional growth, advancement and benefit to CITY.

14. CITY shall encourage attendance at the ICMA Annual Conferences and meetings where FONTES is representing the City at ICMA, APA Annual Conferences and League of California Cities Conferences.

15. With these exceptions, all other actions taken by CITY relating to benefits for executive management employees shall be considered actions granting the same benefits to FONTES. As used herein benefits include, but are not limited to, paid holidays , retirement benefits and payments, health insurance, vision insurance, dental insurance and life insurance.

SECTION 4: RESIGNATION, TERMINATION AND SEVERANCE

A. FONTES may resign at any time upon providing CITY with at least thirty (30) days advance written notice of the effective date of his resignation. Upon receipt of such notice from FONTES, CITY may determine in its sole discretion that FONTES' service shall be continued for an additional thirty (30) days to adequately transition any ongoing work to CITY'S new permanent or interim City Manager. FONTES shall during such continuation period perform sufficient work pursuant to the terms and conditions ns of this Agreement in order to provide for an orderly transition. In the event FONTES terminates this Agreement prior to one year, FONTES shall only be entitled to compensation for the services performed up to the date of such termination, it being understood that any payments are full compensation for the services rendered under this Agreement.

B. The City Council may at any time terminate FONTES upon thirty (30) days advance written notice. Notwithstanding the term set forth in Section 1, if FONTES is

terminated without cause, he will receive a 6-month severance in base pay and health insurance benefits. If FONTES is terminated for cause, severance pay will not be paid.

- C. For the ninety (90) day period immediately following a general or special election at which a City Council member is elected to office, notwithstanding the Seaside Municipal Code, the City Council agrees not to terminate the services of FONTES without cause.
- D. Any deliberations and decision by CITY regarding the termination of FONTES' services shall be made in closed session in accordance with the Ralph M. Brown Act. Except where FONTES is charged with or alleged to have committed criminal misconduct or acts involving moral turpitude, if CITY has decided to terminate FONTES' services CITY shall provide FONTES the opportunity to resign in lieu of being terminated, and the parties shall cooperate regarding public announcements regarding FONTES' separation from CITY.
- E. If a breach of contract is declared by either CITY or FONTES written notice of the breach shall be delivered to the parties as set forth in SECTION 10 of this Agreement, and there shall be a thirty (30) day "cure period" from the date of delivery of said notice for CITY or FONTES to remedy the breach.

SECTION 5: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The City Council, by Resolution, shall fix any other terms and conditions of employment as it may determine from time to time relating to the performance of FONTES provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

SECTION 6: INSURANCE

FONTES shall maintain minimum automobile insurance coverage of: (a) ONE · HUNDRED THOUSAND DOLLARS (\$100,000.00) per person, THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) per any one occurrence; and (b) property damage coverage in an amount not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence.

SECTION 7: CONFLICT OF INTEREST

FONTES, by executing this Agreement, certifies that at the time FONTES signs this Agreement, and for the duration of same, FONTES does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of CITY hereunder, and the interests of such other client.

SECTION 8: ASSIGNMENT

The City Council is entering into this Agreement in consideration of the personal rendition of the services of FONTES, and FONTES shall not assign any of the duties, responsibilities, or obligations of this Agreement except with the express written consent of the City Council.

SECTION 9: MISCELLANEOUS PROVISIONS

- A. WAIVER: The acceptance of any services or the payment of any money by CITY shall not operate as a waiver of any provision hereof, or of any right to damages or indemnity stated herein. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
- B. MODIFICATION: No waiver or modification of this Agreement is valid unless made in writing and signed by all parties.
- C. SEVERABILITY: In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions shall not be affected.
- D. ENTIRE AGREEMENT: This Agreement sets forth the entire understanding between the parties.
- E. HEADINGS: Paragraph headings are used for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions ;
- F. ATTORNEYS FEES AND VENUE: Should any party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.
- G. CHOICE OF LAW: This Agreement is governed by and to be construed in accordance with the laws of the State of California.
- H. CONFIDENTIALITY: FONTES agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without CITY'S prior written consent, any trade secret or confidential information. The covenants contained in this section shall survive the termination of this Agreement for whatever cause but are not intended to keep FONTES from providing confidential information to appropriate CITY officials or other government officials in any investigatory as may be required by law or judicial proceeding of appropriate jurisdiction.
- I. ARMS LENGTH NEGOTIATIONS: This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including California Civil Code § 1654) or legal decision that would require interpretation of the ambiguities in this Agreement against the party that has drafted it is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties in this Agreement.
- J. INDEMNIFICATION & DUTY TO DEFEND: The City will defend subject to the provisions of California Government Code Sections 995.2 and 995.4 and CITY shall defend, hold harmless and indemnify FONTES against any tort, professional liability

claim, demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of FONTES' duties as City Manager except for civil, criminal or administrative actions solely and recklessly initiated by FONTES. The training and other requirements of Government Code 53235 and following and 53237 and following shall apply to the indemnification obligations herein.

SECTION 10: NOTICES

Any notice given under this Agreement shall be in writing and considered given when personally delivered or deposited in the mail (certified or registered) addressed to the parties as follow:

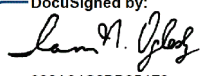
Mayor
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

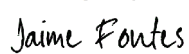
w/email copy to cityattorney@ci.seaside.ca.us

Jaime Fontes
440 Harcourt Avenue
Seaside, CA 93955
{temporary address}

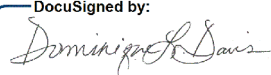
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

CITY:

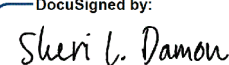
DocuSigned by:

332A84C2BB254F3...
Ian N. Oglesby, Mayor

DocuSigned by:

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Jaime M. Fontes

ATTEST:

DocuSigned by:

0CBADE2A3D5D4CE...
Dominique L. Davis, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

4A83BC1CC84745F...
Sheri L. Damon, City Attorney