

## SPECIAL MEETING of the ROSS TOWN COUNCIL FRIDAY, OCTOBER 28, 2011

**1. 8:00 a.m. Commencement.**

Present: Mayor Carla Small; Mayor Pro Tempore Rupert Russell; Council Member Chris Martin; Council Member Rick Strauss and Town Attorney Greg Stepanicich

**2. Posting of agenda.**

Town Manager Gary Broad reported that the agenda was posted according to government code.

**3. Discussion of Town governance and management, including report by Town Attorney**

Town Attorney Greg Stepanicich provided the Town Council an overview about Town governance and management. There is no blueprint and discretion is given to Town Council on how to establish its administration and management. Typically, there will be a town manager or town administrator, which are commonly used terms. The concept between a town manager is a concept developed in 1900s part of the progressive movement of reform in California of bringing professional management into cities. The government code provides for a town manager form of government if adopted by an ordinance by Town Council or adopted by the people with a ballot measure. The Town Council sets the duties of a town manager by ordinance. In reality, seen throughout California is a real variety of how that relationship is defined by code. The town manager is entirely responsible for all personnel matters, including hiring and firing all staff with the exception of the town attorney, town treasurer, and town clerk assuming those are appointed by the Council. Also, any determination of employees is done by the town manager. On financial matters, again the town manager would be responsible for the administration of finances of the Town and given authority to enter into contracts to some stated dollar amount. In terms of a town administrator, the Council reserves some powers more so than with a town manager with respect to administration. Most commonly there will be some appointment power the Council will reserve such as the police chief, fire chief or certain department heads. This varies significantly from place-to-place. Over 30 plus years in his experience, the trend in California is to go towards a town manager designation for the chief administrative officer. It is the most common, but a number of cities designate a town administrator. Whatever the designated title is, the key is how the ordinance defines the duties. The code must define the functions and duties. Although, amongst managers there tends to be a distinction about what authority they would have in a given town/city. With a town administrator, it is understood that the Council will play a greater role. There are two code sections in Ross that were adopted that provide for the creation of a town manager appointed by Town Council and overall responsibility for administrative affairs of the Town and then there is a specification of duties. The difference is that the Council in Ross has reserved the power to review any demotions or termination of employment and that is not most typical in terms of a town manager form of government, but the Council has a right to reserve in the code. He further believed it would be most productive to answer any questions or go into more detail, if so desired by the Council.

Council Member Hunter asked if there is any difference in the ability to label someone as an administrator or manager in regard to grants and public funding. Town Attorney Stepanicich responded that there is not, and has not heard of that being an issue in terms of power. What must be clear is the power to contract and enter into obligations on behalf of

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the Town, but that would be made clear no matter what the designation. Council Member Hunter stated basically whatever the title is called the Council can determine the contract language. He believed if they move forward with a chief executive officer for the Town that it should be called a manager since the quality of person applying for the position would be better.

Mayor Pro Tempore Russell asked the Town Manager how many years was he an administrator before becoming the town manager. Town Manager Gary Broad noted he believed three years. Mayor Pro Tempore Russell asked staff if it is typical to start as an administrator. Town Attorney Stepanicich noted most typically the code would be clear as to what the designated chief executive officer position is. The position would be designated as a town manager or town administrator. At this point in time in terms of who applies for jobs, most will be a city/town manager since most cities in California have a designation of having a city manager or chief executive officer. The two terms are interchangeable. More typical is if one becomes a city manager, and was not one before, then they were either an assistant city manager or a department head such as a planning director or finance director and then moved into the top management position.

Mayor Small noted that Rabi Elias was listed in the minutes as the Public Works Director/Town Administrator. Town Manager Broad indicated he did not believe Mr. Elias ever held the title of Town Administrator.

Council Member Martin asked the structure of government eight years ago. Town Attorney Stepanicich noted that the code was amended to create the town manager position and he did not review the structure. It would be interesting to see what the code indicated at that point in time.

Council Member Martin discussed the chartered cities vs. general government towns and asked if there is an advantage for Ross to actually be a charter town. Town Attorney Stepanicich did not do an exhaustive search, but none of the smaller towns he is familiar with are charter cities. Any town or city can become a charter city. The process can be somewhat of a long and controversial one. Before Prop 218 there was a big advantage to be a charter city over taxation. Prop 218 now requires all cities whether charter or not any tax has to be submitted to the voters for approval. There are still power advantages with a municipal affair in the charter, the city is free to do what it wants and not under the State general law. There are less differences other than those cities that are charter cities are able to have a strong mayor. In San Rafael, the mayor's position is created by charter and has a different set of powers than San Francisco or Los Angeles that created a stronger mayor form of government. San Rafael is a city manager form of government rather than a strong mayor form of government.

Council Member Martin asked if there are areas in the municipal code that needs strengthening off hand. Town Attorney Stepanicich thinks the provisions on management are pretty typical. It is interesting in cities they do not find a great deal of details specifying the duties of a city manager. Often times the description would be similar to what it is in the Ross code, more general specification of various duties and powers. He did not review in the areas of contracting and other administration and it may be worthwhile to review to see if other provisions should be added. There is no question there are many codes that have much more detail than the Ross code. Council Member Martin clarified that as a Council they are free to amend the code and restructure government that would supersede the general code

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mandated. Town Attorney Stepanicich explained that it is up to the Council to define those responsibilities and duties, so it is up to a town/city how it will set up management.

Council Member Martin stated that the governance section of the municipal code is very vague in terms of what the Town Council does. It basically states that it will meet and hire the town manager, approve the budget, and hire the town attorney and that is about it. When looking at the design review section, where the authority is set up for this Council to act as a Planning Commission, it states some mandates such as this is a small town, and part of what they are charged with is to preserve its beauty as a small town. He is wondering if they can customize the administrative section to also reinforce the importance of running this Town as a small town community, being familiar with people, having small government, being responsive and really creating a mandate, a set up policies by which they will govern the Town. Town Attorney Stepanicich responded in the affirmative. He has seen several cities in recent years establish staff and Council protocols by resolution and one advantage is by resolution, which makes amendments easier than by ordinance. Spelling out in more detail how agendas are set up and interaction with the press evolved over concerns about ambiguity. Developing a set of protocols to detail those relationships can be helpful to provide everyone clear guidance. City of Fairfield spent years developing protocols, and he can identify a number of topics in terms of administration in ways that a city/town defined those relationships for the Council's consideration.

Council Member Strauss believed looking at Fairfield could provide more definition of how the Council interacts with the town manager or whatever form they decide, so that is a good idea. With regards to a town administrator or town manager role, it is really only title. He would go back to what are the duties needed to be performed in the Town to run the Town. He believed a town manager is a higher qualified person. Historically, it might take a Councilperson five months to get an MOU signed. Whereas the Town has been very successful having a town manager negotiate back and forth. In today's world, he is not sure if they can take a step backwards and have less governance. Town Council's come and go and one person should have a history with the Town, which is extremely important in today's world with information moving very quickly.

Town Attorney Stepanicich pointed out that there is no difference legally between a town administrator and town manager. It is just how they define the duties. It is very important to be clear with recruitment what the duties are between staff and the Council in terms of function.

Council Member Martin noted that there is an association of city/town managers that provides accreditation education as a code of ethics and asked the Town Attorney if he had experience in that regard. Town Attorney Stepanicich responded that there is a code of ethics and standards that are established by that organization. California, through League of Cities, there is a city managers division and another origination call CCMF (*California City Manager Foundation*). Each organization provides standards within the profession. Council Member Martin asked if most town/city managers in Marin are accredited through that organization. Town Attorney Stepanicich stated it is not so much accreditation other than standards that must be adhered too. The organization itself will intervene if standards are not properly met, so they do maintain a set of standards for management.

Mayor Small stated as they move forward it is apparent to have an interim person to help through this process. They cannot make all these decisions prior to Town Manager Broad departing. There must be a chain of command for staff. Ross is a small community with small

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staff, so it is really important when they think about the duties. She did not want to be in a situation as Ross School where their superintendent/principal has become ill and it put them in a tough situation, so it is important to look at their department heads. In the sense that Interim Town Clerk Linda Lopez has been doing a lot of the Town Clerk work, look at staff and their responsibilities. If they only have five or six staff members, she did not want to be so dependent on one person, so it is important to look at job duties. Also, think down the road if they do move into fire consolidation that becomes a JPA (*joint powers agreement*) and is one piece that a town manager/town administrator will not be responsible for any more. They must be very thoughtful as they move forward. Certainly there needs to be someone that the staff reports to and it must be someone that is consistent because Council members come and go. Also, in case of an emergency or natural disaster on November 11th or 12th, they must make sure someone is in charge whether that is the police chief or fire chief that will take over emergency operations and be the head of the Town during this interim time period. Town Manager Broad indicated that the fire chief would step in, so that would not change.

Mayor Small pointed out that when she toured the gym at Ross School an emergency center is suppose to be set up, so it would be great if they followed through on that. She noted that one agreement with it being a community gym, and the fact that it is out of the floodplain, is that one room was wired appropriately so all emergency equipment could be set up.

Mayor Small opened the public hearing on this item.

Diane Rudden, Willow Avenue resident, stated if the general norm word is, "*city/town manager*" she suggested they stay with the word, "*manager*." When individuals are applying for a job they will get a different person if called "*administrator*," so she sees no reason to change the verbiage.

Charlie Goodman, former Mayor/Sylvan Lane resident, provided a history as far as town manager/town administrator, and back in the mid 80s they had a town administrator and Council Member Peter Brekhus had always been very much not in favor of having a town administrator. He recalled that the town manager at the time made a bad decision that cost the Town a considerable amount of money. When he came on the Council that position was eliminated, so they did not have a town manager or town administrator for the next 12 years. Former Public Works Director Rabi Elias helped with a lot of that work. As far as finance, he was finance manager and he would sit down with Public Works Director Elias and do the preliminary on the budget. The Town functioned very well without that type of position. Also, having lived in Ross for 50 years, the community always wanted their elected officials to manage the Town. If they felt one Council member was not doing a proper job then that person did not get elected again. They never wanted to see this separation between how the Town is run. On a personal level, it was always better when he was on the Council, if he needed to talk to staff there was a direct conversation, not a level of going through the town manager to do so. Another point, when they indicate that it is only a title, well it is not. The salaries are compared to town managers throughout Marin and throughout Northern California. In his view, this Town is not big enough to need a "*town manager*" and questioned if the Town needs the title of "*town administrator*."

Anne Fleming, former Council member/Hillgirt Drive resident, agreed with Mr. Goodman's comments.

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Phil Paisley, Baywood resident, appreciated what the Mayor said about being able to deal directly and also if someone leaves that there is staff, which is important. Also, the comment about functions have grown and the Council must make a decision on what they want to do and not. There is a knee jerk reaction that the Town must belong to this or do this. All towns elect officials and believe those officials run the town, but most of the time that is not true. Ross has an opportunity in a small environment, which is very unique for California of making that come true.

Council Member Martin noted that there has been some concern over the workload that would fall on the Council if they do not have a town manager form of government, and asked Mr. Goodman to comment on the workload and responsibilities that fell on the Council during his time. Mr. Goodman responded that one thing that change dramatically was a lot of time spent on variances and that position was greatly lessened four or five years ago with the design review community. He believed during his time on the Council they did a lot more work doing the Town administration than what he has seen in later years. Ms. Fleming agreed they spent hours visiting sites and trying to figure it out. Some Council members were more experienced than others, but it was a long and very worthwhile process. Also, prior to Public Works Director Rabi Elias, Jorgen Lunding was the Public Works Director and he was a very forceful and powerful individual who did a wonderful job. She further believed having a strong staff is important.

Mayor Small asked Mr. Goodman how was the reporting structure between Public Works Director Rabi Elias, Town Manager Gary Broad, and Town Clerk Laura Thomas. Mr. Goodman noted that the committees have not changed in 25 years. They had general government, finance, public safety and streets and parks. Basically whoever was on streets and parks would talk to the Public Works Director. Mayor Small wanted to know what was the chain of command and who evaluated those positions. Mr. Goodman indicated that the Council evaluated and the Mayor was the head chair of all those committees. The Council would discuss salaries of employees during their budget meetings and the Council made the decision. Mayor Small asked Town Manager Broad who evaluated his performance and who did he report to prior to becoming the Town Manager. Town Manager Broad noted that he generally reported to the Mayor.

Public Works Superintendent Robert Maccario believed it is best since this is a small Town that hats are interchangeable and the more that happens the better. Department heads run their department. Each department has a small staff. It is pretty much how well they work together. The better power is balanced is best. Too much power in one person's hands could potentially be trouble. He suggested selecting one department head to be an intermediary. He tells the Council what they need to hear and not what they want to hear and the Council then decides. When former Public Works Director Elias worked for the Town there were no splits and the Council talked to staff more often. Town staff works together as a team and no one pulls rank. He further recommended that the Council spend the money wisely because it is better to have more Indians than Chiefs. Mayor Small believed Town Manager Broad has done a great job not micromanaging staff and commended staff on establishing their weekly staff meetings.

There being no further public testimony on this matter, the Mayor closed the public portion and brought the matter back to the Council for discussion.

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Council Member Hunter noted for the record that the Council still visits sites in regard to design review, but with the Advisory Design Review (ADR) Group they stopped the train wreck. Every Council member for every design item visits the site.

Council Member Strauss noted in seven years that he has served on the Council there is more paperwork from the community than there ever was. Even in the last four years there is a lot of material to review. Design review is helpful so a lot of matters are done at design review and not at the Council level. Now, the Council reviews more ordinances, six years ago it was more about variances. Mayor Small stated with the invention of email, the Council receives a lot more material.

Council Member Martin added that the Brown Act has changed. They are required to have public meetings with at least two Council members in attendance. The public is involved, so government cannot be streamlined as in the past. They have a great opportunity to restructure government. Los Gatos has a city/town manager system. In an interview, the Los Gatos Town Manager stated, *"they are a small community and they do not have to follow hierarchy strictly. Staff and Public Works can deal directly with police and it comes down to customer service first and that is what makes our work better for residents and businesses in Los Gatos."* He believed there is an opportunity for the Council to examine the delivery of government and how they structure Town staff to be ultimately more responsive to the Council and the needs of the community. He welcomes the opportunity to review the municipal code. They have a lot of gaps, particularly when it deals with communication between the Council, Town Manager and staff. In reviewing that and being more complete with how they run their government and what they expect, will give clarity and ultimately give better structure of government. He is all for going through a process of examining how they structure government and particularly the role of the town manager/town administrator.

Mayor Pro Tempore Russell indicated that it sounds like they do not have to make a decision today one way or the other, but they must make a decision fairly soon as to what will happen in the aftermath of Town Manager Broad departing. He wanted to know what will be done in the interim.

Mayor Small indicated that there are a lot of different pieces in the pie. She believed the Town would benefit from bringing in an interim part-time person to be totally objective to help the Town with the structure to make sure all staff have a chain of command. Mayor Small along with Mayor Pro Tempore Russell will start interviewing possible applicants. The General Government Committee should start looking at the structure, the positions and talk to staff and develop recommendations along with the interim person coming in. The Finance Committee should review all salaries in Marin and provide a recommendation of who should be an interim finance director while they go through this process coupled with the interim or someone on staff that could work with Interim Town Clerk Lopez through this process. She further stated that each Council member has an assignment to bring back to the Council, so everyone participates in the process.

Interim Town Clerk Lopez stated her interaction with the Town Manager is probably the most than other staff and department heads, so they really need to have an interim person part-time in a management position. At least once a day there is a question that she is unable to answer that does not relate to fire or police.

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Council Member Strauss noted that other communities that have gone through this hired consultants. Mayor Small received an email from Wayne Bush who was an interim for Mill Valley and the project manager for Fairfax. Council Member Hunter agreed this is a small business and small businesses need managers, so he is all for an interim person. He further suggested that the interim person also be the finance person. Town Attorney Stepanicich indicated that the code designates the town manager as being the finance director.

Mayor Pro Tempore Russell noted that they must spend substantially more on that interim since there will be more hours. At \$150 per hour they must decide how many hours they want someone to come in. Council Member Hunter believed it would be interesting to see what Pat Thompson charged Santa Rosa. Town Manager Broad noted that the League of California Cities has a list of individuals seeking employment for different governmental positions. Town Manager Broad noted that St. Helena had their finance director serve as an interim city manager. Mayor Small stated that many communities are much larger than Ross and have assistants. When she printed off staff and salaries of all communities in Marin, Ross has the smallest staff.

Council Member Martin stated given that there is an immediate need to fill a gap, he is very comfortable having the Mayor and Mayor Pro Tempore begin a process of reviewing potential applicants with a strength in finance. Then make a recommendation to the full Town Council on both a person as well as the hours that they would recommend that the Town engage this person.

Mayor Pro Tempore Russell believed they must look at Public Works Director Bob Hemati in the interim as an alternative basis in terms of the finance director. Council Member Strauss added that many day-to-day questions might have to go back to the department heads or the Mayor. Mayor Small committed herself to be available and present during this time. They must jump very quickly on reviewing names, making phone calls and interviewing potential applicants next week.

Council Member Hunter added that the Mayor made a great point and that is as they go through this recruiting process, if the Council decides to merge fire that is one-fifth of the responsibility that went away. Also, one of the things under the current Town Manager that they have done exceptionally well is getting grants. Over \$3 million due to a very able networked manager running the Town, which cannot be forgotten. During this interim period, in terms of finance they are in great shape. They have their budget for next year. Systems are in place. There is a large reserve, so there are no big decisions that have to be made during what should be a relatively brief interim period. They must move forward to find an interim and then work on exactly what the final contract will be for the new person and duties.

Mayor Small took it upon herself to contact Project Planner Christine O'Rourke to ensure that she will continue to participate and work with the Town because she is involved with many ongoing projects and she agreed to continue with the Town. Town Manager Broad noted that it is likely that all TAM (*Transportation Authority of Marin*) grants would go through Public Works, so Public Works Director Hemati or Public Works Superintendent Maccario will get noticed. If it goes through planning, then Project Planner O'Rourke will be noticed. It is all about packaging the grant and getting the strongest application.

Council Member Martin noted that the County will apply for a grant for bridge replacement where it impacts the Corte Madera flood control. Ross does not have the grant money they

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use to have 10 years ago. Town Manager Broad agreed and noted that Town Engineer John Moe is aware of bridge grants as well. Mayor Small added that Town Engineer Moe brought forward the preventive bridge maintenance, so they are fortunate to have very competent staff and consultants. Public Works Director Hemati receives emails from the State in terms of what is being updated, granted and pursued. Council Member Martin stated given that they have this gap and transition period, it is probably better that staff is more vigilant on any grant opportunities than ever just, so they all must keep their eyes open.

#### **4. Council discussion/action regarding transition plan post Town Manager departure.**

Mayor Small indicated that in conversations last week, the Council received a checklist from all department heads. Town Manager Gary Broad provided a living document and suggested that the Council review over the next few days and see if it jogs their memory on other items that they believe should be on the list or questions on other items. He took the list that staff and some of the consultants turned in and he tried to aggregate the list so items are together by month and has no doubt there will be other items that must still get added to the list. It is a living document and over the next couple of weeks at least the major items can get identified, especially the ballot measures. On some of the ballot items Interim Town Clerk Linda Lopez will conduct more exploration to get precise dates, especially for the municipal services tax. It is an aggregation and an incomplete document, but it starts to move towards having this list together. Mayor Small believed it is also extremely helpful as they move through an interview process with interims. Town Manager Broad agreed it will provide an idea of the big-ticket items and when they will likely kick in.

Council Member Strauss asked how the Town Manager's phone calls and emails will be monitored. Mayor Small believed it will depend on how soon an interim can fill the position. If Interim Town Clerk Lopez determines that they cannot go to another department head, then they will go to the Mayor. Mayor Small will be available to staff members as well as residents throughout this process.

Council Member Martin asked staff about the new phone system. Interim Town Clerk Lopez responded that the new phone system is in the works. Also, the Council must decide whether to have Town Manager Broad's calls forwarded to her or add a contact message. Council Member Hunter believed they should just forward all calls to Interim Town Clerk Lopez. Town Manager Broad agreed. In terms of emails, they will be forwarded to Interim Town Clerk Lopez as well and then she would forward to the appropriate department. When Public Works Director Mel Jarjoura left the Town and before hiring Public Works Director Bob Hemati, all emails were forwarded to his computer. He then handled what he could and forwarded the other emails to appropriate departments, so they would use the same system.

Council Member Hunter asked if staff receives a lot of junk emails. Town Manager Broad stated not much since the Town has a good spam filter. Council Member Hunter stated a notice could indicate that Town Manager Broad is no longer with the Town of Ross and that individuals should contact Interim Town Clerk Lopez, which can weed out frivolous requests.

Mayor Small opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public portion and brought the matter back to the Council for discussion and action.

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Mayor Pro Tempore Russell wanted to hear staff's thoughts in regard to an interim position. Senior Planner Elise Semonian believed an interim is a great idea, but hoped the interim could be hired before Town Manager Broad leaves in order to have some transition between the two of them. Then schedule a staff meeting to understand what is going on and talk about the broader items. Interim Town Clerk Linda Lopez agreed with Senior Planner Semonian's comments. Someone who has been a city/town manager will bring that experience to the Town. No one on staff currently has all of that knowledge to take on an interim position.

Building & Public Works Secretary Simone Jamotte believed an interim is very good. He or she must understand the duties and see what part of government he or she will handle, and if that can be distributed great, if not, then look for someone to fill the position. An interim is a good next step, so the Town can review the concept, adapt and choose what works.

Mayor Small believed it is important that whomever is chosen is someone who has absolutely no interest in any future position and simply present to bring in their experience and objectivity as to how the Town can best govern themselves in a way that meets the needs of staff, residents and is fiscally prudent.

Council Member Hunter agreed they need someone who will assist the Town. Woodland in Yolo County just switched city manager's and he was quoted in the paper as stating, "*he is not here to keep the seat warm, but here to be an activist interim,*" which is what Ross needs. Town Attorney Stepanicich explained that anyone retired from CalPERS could only work 960 hours per year for any entity. Therefore such person could not take a permanent position. They can serve as an interim otherwise they must give up their retirement benefits.

Mayor Small noted that a part-time position at 20 hours per week could be attractive. Town Attorney Stepanicich has found that 960 hours does not create a problem typically in a transitional interim basis.

Council Member Hunter asked the Town Attorney in his experience if he has seen good interims. Town Attorney Stepanicich responded in the affirmative. He then agreed to provide input privately to the Council.

Mayor Pro Tempore Russell asked staff if former Public Works Director Rabi Elias is available. Town Manager Broad noted that he retired and is interested in a project manager position. The Town could consider approaching Mr. Elias to see if this met his desire for a project manager position since he knows Ross's operation and worked in San Anselmo.

Mayor Small asked for a motion.

**Council Member Martin moved and Council Member Strauss seconded, that Mayor Small and Mayor Pro Tempore Russell begin a process of identifying an interim Town Manager/Administrator with a strong financial background and to present that recommendation at an upcoming Town Council meeting. Motion carried unanimously.**

*Mayor Small announced that the Council will meet again next Friday, November 4th, 2011 at 8 a.m. to discuss the Mayor/Mayor Pro Tempore recommendations.*

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Mayor Small attended the School Board meeting on Wednesday night and they responded to the encroachment permit. There was a recommendation from the School Board to schedule a meeting with two Council members, two School Board members and Ross Rec to work through matters. She further asked that the matter be placed on the agenda for the November 4th Town Council meeting.

**5. Adjournment.**

Mayor Small moved to adjourn at 9:22 a.m.

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Carla Small, Mayor

ATTEST:

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Gary Broad, Town Manager