



CITY COMMISSION SPECIAL MEETING

Meeting Streamed By YouTube - LIMITED CAPACITY
Monday, April 18, 2022

AGENDA

A. INVOCATION AND PLEDGE OF ALLEGIANCE

B. ROLL CALL

C. TOPIC

- 1. RESOLUTION 2022 – 05(b) (*Public Hearing*) A FINAL RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, IN ACCORDANCE WITH ARTICLE III, ENTITLED “CHARTER OFFICERS”, SECTION 3.03, ENTITLED “REMOVAL”; TO CONSIDER REMOVAL OF CITY MANAGER GREG THOMPSON AND OFFER AN OPPORTUNITY FOR A PUBLIC HEARING BEFORE THE COMMISSION ON MATTERS RAISED BY PRELIMINARY RESOLUTION NO. 2022-05(A) PERTAINING TO THE TERMINATION OF THE CITY MANAGER WITH CAUSE.**

D. DISCUSSION, COMMENTS, CONCERNS

E. ADJOURN

Any citizen of the audience wishing to appear before the City Commission to speak with reference to any agenda or non-agenda item must complete the “Request for Appearance and Comment” form and present completed form to the City Clerk prior to commencement of the meeting.

Should any person seek to appeal any decision made by the City Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Reference: Florida Statutes 286.0105)

In accordance with the provisions of the Americans with Disabilities Act (ADA), this document can be made available in an alternate format upon request. Special accommodations can be provided upon request with three (3) days advance notice of any meeting, by contacting City Clerk Tijauna Warner at Pahokee City Hall, 207 Begonia Dr. Pahokee, FL 33476 Phone: (561) 924-5534. If hearing impaired, telephone the Florida Relay Service Number, 800-955-8771 (TDD) or 800-955-8770 (Voice), for assistance. (Reference: Florida Statutes 286.26).

RESOLUTION 2022 – 05(b)

A FINAL RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, IN ACCORDANCE WITH ARTICLE III, ENTITLED “CHARTER OFFICERS”, SECTION 3.03, ENTITLED “REMOVAL”; TO CONSIDER REMOVAL OF CITY MANAGER GREG THOMPSON AND OFFER AN OPPORTUNITY FOR A PUBLIC HEARING BEFORE THE COMMISSION ON MATTERS RAISED BY PRELIMINARY RESOLUTION NO. 2022-05(A) PERTAINING TO THE TERMINATION OF THE CITY MANAGER WITH CAUSE.

WHEREAS, Article III, entitled “Charter Officers”, Section 3.03 entitled “Removal” of the City of Pahokee’s Charter provides that in order: “To remove a Charter officer, the city commission shall adopt a preliminary resolution stating reasons for the intended removal and shall offer the Charter officer an opportunity for public hearing before the commission on the matters raised by the resolution. This preliminary resolution may also suspend the Charter officer from duty immediately with pay. The Charter officer must accept the offer of public hearing or file a written response within ten (10) days of the adoption of the preliminary resolution or the resolution becomes final at the expiration of this ten-day period and the Charter officer is terminated on that date. If the public hearing is requested it shall be held not earlier than twenty (20) days or later than thirty (30) days after the adoption of the preliminary resolution. After such public hearing, or after consideration of any written response, the commission shall adopt a final resolution of removal or let the preliminary resolution lapse”; and

WHEREAS, at the March 18, 2022 Special Meeting and the March 22, 2022 regularly scheduled meeting of the City of Pahokee, the City Commission voted for the intended termination of City Manager Greg Thompson pursuant to the terms set forth in the City Charter; and

WHEREAS, more specifically, at the March 22, 2022 regularly scheduled commission meeting, a motion was carried by a 3-2 majority vote for the intended removal of City Manager Greg Thompson, with cause. The following reasons are the reasons for the intended removal: insubordination, lack of information provided concerning the City Manager’s accident in a city vehicle and lack of City application or resume; and

WHEREAS, at the March 25, 2022 Special Meeting of the City of Pahokee, the City Commission, voted to immediately suspend the City Manager from duty, with pay,

pending a request for a Public Hearing or a written response to Preliminary Resolution No. 2022-05(a); and

WHEREAS, City Manager Greg Thompson was offered an opportunity for a public hearing before the commission on matters raised by Preliminary Resolution No. 2022-05(a) and pursuant to Article III, Section 3.03 of the City of Pahokee’s Charter entitled “Removal”; and

WHEREAS, the City Manager accepted the offer for Public Hearing by filing a timely written response and said hearing was held on April 18, 2022 at 5:00 PM; and

WHEREAS, after a public hearing and consideration, the commission finds that the City Manager shall/shall not be terminated with cause.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AS FOLLOWS:

- Section 1.** Recitals. The recitals to the preamble herein are incorporated by reference.
- Section 2.** Action. The City Commission of the City of Pahokee, Florida hereby finds that the City Manager shall / shall not be terminated for the following reasons: insubordination, lack of information provided concerning the City Manager’s accident in a city vehicle and lack of City application or resume.
- Section 3.** Public Hearing. A Public Hearing to consider the removal of City Manager Greg Thompson was held on April 18, 2022 at 5:00 PM. The Public Hearing was legally held not earlier than twenty (20) days or later than thirty (30) days after the adoption of the preliminary resolution.
- Section 4.** Adoption of Final Resolution. The City Commission hereby adopts its Final Resolution pertaining to the removal of City Manager Greg Thompson and matters raised by Preliminary Resolution No. 2022-05(a) and finds that City Manager shall / shall not be terminated with cause.
- Section 5.** Scrivener’s Errors. Sections of this Resolution may be renumbered or re-lettered and corrections of typographical errors which do not affect the intent may be authorized by the City Attorney or designee,

without need of public hearing by filing a corrected copy of the same with the City Clerk.

Section 6. Effective Date. This Resolution shall be effective immediately.

PASSED AND ADOPTED this _____ day of _____, 2022.

Keith W. Babb, Jr., Mayor

ATTEST:

Tijauna Warner, CMC, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Burnadette Norris-Weeks, P.A.

Moved by: _____

Seconded by: _____

Mayor Babb _____
Commissioner Boldin _____
Commissioner Gonzalez _____
Commissioner Murvin _____
Commissioner Perez _____

RESOLUTION 2022 – 05(a)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, IN ACCORDANCE WITH ARTICLE III, SECTION 3.03 ENTITLED REMOVAL OF THE CITY OF PAHOKEE CODE OF ORDINANCES, TO PROVIDE REASONS FOR THE INTENDED REMOVAL OF THE CITY MANAGER AND OFFER THE CHARTER OFFICER CITY MANAGER AN OPPORTUNITY FOR PUBLIC HEARING BEFORE THE COMMISSION ON THE MATTERS RAISED BY THE RESOLUTION.

WHEREAS, Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances provides that in order to: “To remove a Charter officer, the city commission shall adopt a preliminary resolution stating reasons for the intended removal and shall offer the Charter officer an opportunity for public hearing before the commission on the matters raised by the resolution. This preliminary resolution may also suspend the Charter officer from duty immediately with pay. The Charter officer must accept the offer of public hearing or file a written response within ten (10) days of the adoption of the preliminary resolution or the resolution becomes final at the expiration of this ten-day period and the Charter officer is terminated on that date. If the public hearing is requested it shall be held not earlier than twenty (20) days or later than thirty (30) days after the adoption of the preliminary resolution. After such public hearing, or after consideration of any written response, the commission shall adopt a final resolution of removal or let the preliminary resolution lapse.”

WHEREAS, at the March 18, 2022 Special Meeting and the March 22, 2022 Regularly Scheduled Meeting of the City of Pahokee City Commission, the Commission voted to terminate the City Manager with cause. The reasons for the intended removal are: insubordination, lack of information provided concerning the City Manager’s accident in a city vehicle and lack of City application or resume.

WHEREAS, at the March 25, 2022 Special Meeting of the City of Pahokee City Commission, the Commission voted to suspend the City Manager from duty immediately with pay.

WHEREAS, upon adoption of this resolution, the procedure in Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances will commence.

WHEREAS, under Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances, the Charter Officer of City Manager will then have an opportunity for public hearing before the commission on the matters raised in this resolution.

WHEREAS, the Charter Officer of City Manager must accept the offer of public hearing or file a written response within ten (10) days of the adoption of the preliminary resolution or the resolution becomes final at the expiration of this ten-day period and the Charter officer is

terminated on that date. If the public hearing is requested it shall be held not earlier than twenty (20) days or later than thirty (30) days after the adoption of the preliminary resolution.

WHEREAS, after such public hearing, or after consideration of any written response, the commission shall adopt a final resolution of removal or let the preliminary resolution lapse.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AS FOLLOWS:

Section 1. Action. The City Commission has voted to terminate the manager, Greg Thompson, with cause with the following reasons for the intended removal: insubordination, lack of information provided concerning the City Manager’s accident in a city vehicle and lack of City application or resume. The City Commission has voted to immediately suspend the City Manager from duty with pay.

Section 2. Notice. This resolution will serve as the preliminary resolution required for a Charter Officer under Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances.


Section 3. Adoption. Upon adoption of this resolution, the procedure in Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances will commence. Under Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances, the Charter Officer of City Manager will then have an opportunity for public hearing before the commission on the matters raised in this resolution. The Charter Officer of City Manager must accept the offer of public hearing or file a written response within ten (10) days of the adoption of the preliminary resolution or the resolution becomes final at the expiration of this ten-day period and the Charter officer is terminated on that date. If the public hearing is requested it shall be held not earlier than twenty (20) days or later than thirty (30) days after the adoption of the preliminary resolution. After such public hearing, or after consideration of any written response, the commission shall adopt a final resolution of removal or let the preliminary resolution lapse.

Section 4. Preliminary Resolution. This resolution will serve as the preliminary resolution as required by Article III, Section 3.03 “Removal” of the City of Pahokee Code of Ordinances.

Section 5. Effective Date. That this ordinance shall become effective immediately upon passage.

(INTENTIONALLY LEFT BLANK)

ATTESTED:


Tijauna Warner, City Clerk


Mayor Keith W. Babb, Jr.

APPROVED AS TO
LEGAL SUFFICIENCY:

By: 
City Attorney

Mayor Babb	<u>Yes</u>
Commissioner Boldin	<u>Yes</u>
Commissioner Gonzalez	<u>Absent</u>
Commissioner Murvin	<u>Yes</u>
Commissioner Perez	<u>Absent</u>



Written response of the City Manager to Resolution 2022-05(a)

By way of background, on March 18, 2022, the Commission for the City of Pahokee voted to terminate the City Manager without cause. On March 22, 2022, after a new Commission was seated, the Motion to terminate the City Manager was opened for reconsideration, and this time the Commission voted to terminate the City Manager for cause. The interim City Attorney asked the Commission to identify the reasons constituting cause. The Commission identified the following, “insubordination, accident in city vehicle, and lack of city application or resume.” Then on March 25, 2022, the final Resolution, the wording of which was revised after the prior approval, was read into the record and approved by the City Commission. The new reasons identified as cause for the City Manager’s termination were, “insubordination, lack of information provided concerning the City Manager’s accident in a city vehicle and lack of an application or resume.”

The change in wording from the Resolution approved on March 22 to the final resolution approved on March 25 appears to try to avoid liability of the Commission for retaliation under the Florida workers’ compensation law. The initial reason stated for cause was “accident in city vehicle.” This is an accident

that is covered by worker's compensation and termination based on this accident constitutes retaliation.

As to the termination, the Commission can only deny the City Manager the severance provided for in his Employment Agreement if he is terminated with cause. Pursuant to the City Manager's Employment Agreement, cause is defined as:

(1) Misfeasance, Malfeasance and/or Nonfeasance in the performance of the Manager's duties and responsibilities.

(2) A plea agreement, a plea of *nolo contendere*, a pretrial intervention agreement, or a conviction of a felony or misdemeanor, whether or not adjudication is withheld.

(3) (a) Insubordination; or

(b) Substantial failure to meet reasonable Goals and Standards, as set pursuant to paragraph 6C after receipt of notice of substantial failure, and a reasonable time to implement a plan to cure the substantial failure.

(c) Inability to Perform Job duties.

(1) If Manager is unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks, Employer shall have the option to terminate this Agreement in accordance with the provisions and requirements of 9A, Without Cause, and in accordance with Federal provisions under the Americans with Disabilities Law and other applicable laws. Any payments due to Manager will be offset by any disability benefits Manager receives from or through Employer for the four-week period.

(2) If necessary, to determine whether to continue the services of Manager due to inability to perform job duties, Employer has the right to require a physical or psychiatric examination by a qualified physician or psychiatrist to be chosen from a list of at least three doctors approved by

the Employer. In the event such examination is required, Employer will pay all costs of said examination.

As mentioned above, Resolution 2022-05(a) sets forth the reasons for the City Manager's termination with cause: insubordination, lack of information provided concerning the City Manager's accident in a city vehicle and lack of an application or resume. The only reason identified in this Resolution that could constitute cause as defined in the City Manager's Employment Agreement is insubordination. However, the Resolution does not identify what conduct by the City Manager allegedly constituted insubordination. The Resolution is completely lacking in detail or specific facts and therefore, it is impossible for the City Manager to respond. Failure to provide sufficient notice of the charges is a denial of due process. Relying on the verbal discussion at the three Commission meetings, the insubordination appears to consist of the City Manager's failure to provide information and/or documents. Some of the information requested, according to the Interim City Attorney was more appropriately directed to the Human Resources Department rather than the City Manager. Regardless, this does not rise to the level to terminate the City Manager for cause. Broward County School Board v. Abram, 2016 Fla. Div. Adm. Hear. LEXIS 28 (Failure to respond to repeated requests and directives constituted insubordination, which was cause for a three-day suspension without pay).

The other reasons cited by the Commissioners for the City Manager's termination, "lack of information provided concerning the City Manager's accident in a city vehicle and lack of an application or resume" appear to fall under (3)(b) which require notice to the City Manager of the failure to meet

reasonable Goals and Standards and a reasonable time to implement a plan to cure the failure. Since that did not occur in this case, these reasons cannot support a finding of cause for termination.

While the City of Pahokee has the absolute right to terminate the City Manager, it has done so with cause, thereby denying Mr. Thompson the severance he would be entitled to if his termination was without cause. Since severance money constitutes a substantial interest, should the Commission proceed to adopt a final resolution of removal terminating with cause⁴, the City Manager is entitled under Fla.Stat. 120.57 to a hearing before the Florida Division of Administrative Hearing to determine if the City of Pahokee has established just cause. Alternatively, given Mr. Thompson's Employment Agreement, he could sue for breach of contract¹ which would allow a court to determine whether the Commission established cause or not. Where an employee would be denied severance if termination were for cause, it is a question of fact and, therefore, up to a jury to determine if the alleged insubordination constitutes cause. Strahm v. Aetna Cas. & Sur. Co., 285 So. 2d 679 (Fla. 3d DCA 1973). We are confident that, regardless of which appeal process is pursued, we will be successful in this process.

Based on the foregoing, we request that the City revise the termination of the City Manager without cause and provide him with the severance to which he is contractually entitled.

¹ In a breach of contract lawsuit, in addition to alleging that the termination was not for cause, an additional breach of the contract will be raised, based on the elimination of a benefit provided under the Employment Contract, specifically the requirement that the City Manager return the City vehicle to which he was entitled until his termination is finalized.

Respectfully submitted,

By: 

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