



Introduced and Read on: October 12, 2021

Read and Adoption: October 12, 2021

**THE TOWN OF CAPITOL HEIGHTS
RESOLUTION 2022-02**

(Written by Town Attorney Kevin J. Best)

Introduced by: CM Akers, CM Brown, CM Chew and CM Williams

A RESOLUTION APPROVING AND RATIFYING THE APPOINTMENT OF THE TOWN ADMINISTRATOR AND THE WRITTEN CONTRACT FOR THE TOWN ADMINISTRATOR

EXPLANATORY STATEMENT: The Charter requires the appointment of a Town Administrator. The Mayor and Council have undergone a process to choose a new Town Administrator and to negotiate a contract and now wishes to memorialize approval of its appointment to office and consent to the employment contract. This Resolution may be adopted and approved at the same public meeting pursuant to the *Procedural Rules for the Town of Capitol Heights Mayor and Council*. Items to be voted on shall have been discussed in a previous work session; however, exceptions may be made by majority vote of the Council for emergencies or where an expedited decision is needed to meet a deadline. Any provision of said rules not governed by State law, the Town Charter, or the Town Code may be temporarily suspended at any meeting by a vote of a majority of the Council present and voting (if necessary, Mayor [or Mayor Pro Tem] will vote to break tie). The vote on any question to suspend the rules shall be by “yeas” and “nays” and shall be entered into minutes. There will be no “debate” on a vote to temporarily suspend rules.

WHEREAS, pursuant to Section 401 of the Town Charter, the Town has the power to employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or state law and to operate the Town government; and

WHEREAS, pursuant to Section 407 of the Town Charter, the Mayor and Council is required to appoint a Town Administrator to serve as the Chief Financial Officer of the Town; and

WHEREAS, pursuant to Ordinance 2015-02 enacted on December 14, 2015, the Mayor and Council revised and readopted the Personnel Manual; and

WHEREAS, the Council wishes to ratify a contract with Ms. Habada, an experienced municipal administrator, that was originally drafted and negotiated by her and the Council, and underwent several changes and edits between the period on or about July 13, 2021 and August 10, 2021 as reviewed by the Council and its representatives including Councilmember Akers, Town Attorney Best and Consultant Monroe with the knowledge of Acting Town Administrator Miller; and

WHEREAS, the Council by majority consensus and/or a voice vote at a previous meeting approved the appointment of Beverly Habada as Town Administrator whereby she was sworn into office on August 20, 2021 by a Deputy Clerk of the Circuit Court of Prince George’s County at the Courthouse in Upper Marlboro and she began the performance of her office’s duties on the following Monday in accordance with the above referenced-contract; and

WHEREAS, pursuant to Section 506 of the Town Charter, “...any contract, verbal or written, made in violation of this Charter shall be voidable...,” which is defined by *Black’s Law Dictionary* as “capable of being annulled,” but nonetheless the governing body may ratify the contract by conduct or by an express affirmation (*see also* §2A-108 of Ord. 2006-11 stating “[i]f any official of the town purchases or contracts for any goods or services or for capital improvements in a manner contrary to the provisions of this Article, such purchase or contract shall be voidable by the Town.”); and

WHEREAS, a controversy has arisen whereby certain members of the Council argue or have complained to the Md. Open Meetings Compliance Board that neither the appointment nor the contract of the new Town Administrator were properly voted upon in open session and approved; and

WHEREAS, the Council wishes to settle the controversy and ratify the appointment and contract of Ms. Beverly Habada as Town Administrator, who shall serve as the chief administrative officer of the municipality pursuant to § 407 of the Town Charter, and the Employee Personnel Manual; and

WHEREAS, the Council finds that a majority vote (i.e., 4 votes) of all members of the Mayor and Council pursuant to Section 407 of the Town Charter is required to appoint a Town Administrator, but pursuant to the Md. Common Law and Ord. No. 2006-11 an employment contract simply requires the majority of those present and voting to approve the contract provided the authorizing appropriation was authorized by ordinance and by at least five (5) members of the Mayor and Council.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, BY THE MAYOR AND COUNCIL OF THE INCORPORATED TOWN OF CAPITOL HEIGHTS, this 12th day of September 2021 as follows: (i) That Beverly Habada, is hereby approved or ratified as the duly appointed Town Administrator for the Town, and (ii) That the Employment Agreement for the Town Administrator (Beverly Habada) dated August 19, 2021 and previously signed by Ms. Habada and Councilmembers Akers, Chew, Williams and Brown, and attached hereto and incorporated herein by reference as Exhibit 1, is hereby ratified and approved by the Town Council.

AND BE IT FURTHER RESOLVED AND ORDERED that this Resolution shall take effect immediately upon passage.

PASSED this 12th day of October 2021.

THE TOWN OF CAPITOL HEIGHTS, by and through its Mayor and Common Council

Renita A. Cason
Mayor Pro Tempore/Councilmember
Resolution 2022-02

Rhonda Akers
Councilmember
Resolution 2022-02

Caroline Brown
Councilmember
Resolution 2022-02

LaTonya Chew
Councilmember
Resolution 2022-02

Faith T. Ford
Councilmember
Resolution 2022-02

Elaine Williams
Councilmember
Resolution 2022-02

ATTEST:

Town Employee or Official
Resolution 2022-02

Temporarily Vacant Mayor

CERTIFICATION

I, HEREBY CERTIFY, as the duly appointed Town Clerk of the Town of Capitol Heights, Maryland, that on the 12th day of October 2021 with ___ Aye votes and _____ Nay votes, the aforesaid Resolution passed.

Robin Bailey-Walls, Town Clerk
Resolution 2022-02