



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Thomas J. Willi, Interim Town Administrator - 797-1030

TITLE OF AGENDA ITEM: A Resolution of the Town of Davie, Florida, authorizing the Town Council to execute an Agreement for the appointment of Kenneth S. Cohen as the Assistant Town Administrator; and providing an effective date.

REPORT IN BRIEF:

The Town of Davie desires to employ Kenneth S. Cohen as Assistant Town Administrator. As an inducement to employment and a long term relationship, it is the desire of the Town Council to provide certain benefits and to establish distinct conditions of employment appropriate to the Assistant Town Administrator.

PREVIOUS ACTIONS: Not Applicable

CONCURRENCES: Not Applicable

FISCAL IMPACT: Not Applicable

RECOMMENDATION(S): Motion to approve the Resolution

Attachment(s): Resolution
Employment Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN COUNCIL TO EXECUTE AN AGREEMENT FOR THE APPOINTMENT OF KENNETH S. COHEN AS THE ASSISTANT TOWN ADMINISTRATOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie has negotiated a contract with Kenneth S. Cohen for the purposes of having Kenneth S. Cohen serve the Town of Davie in the capacity of Assistant Town Administrator; and

WHEREAS, the Town Administrator has recommended that the Town Council appoint Kenneth S. Cohen to serve in the capacity of Assistant Town Administrator, which responsibilities shall include administration and operation of activities; and

WHEREAS, the parties have reached agreement with respect to terms of the appointment and wish to reduce the agreement to writing.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor is hereby authorized to execute the "Employment Agreement", a copy of which is attached hereto as Exhibit "A".

SECTION 2. That Kenneth S. Cohen is appointed to serve in the position as Assistant Town Administrator for the Town of Davie under the terms and conditions as set forth in Exhibit "A" attached hereto and made a part hereof.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

ACTING TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

EMPLOYMENT AGREEMENT

THIS AGREEMENT entered into this 4th day of October, 2000, by and between the Town of Davie, Florida, a municipal corporation (hereinafter referred to as "Davie") and Kenneth S. Cohen.

Witnesseth:

WHEREAS, the office of the Assistant Town Administrator is a unique position with responsibility to supervise the administrative activity of the Town and to provide for the coordination of such activities; and

WHEREAS, Davie desires to employ the full-time services of Mr. Cohen as Assistant Town Administrator of the Town of Davie, to fulfill the responsibilities of the office as specified in the Town Charter; and

WHEREAS, Davie wishes to enter into an agreement with Mr. Cohen for appointment of Mr. Cohen to serve as Assistant Town Administrator; and

WHEREAS, as an inducement to employment and the establishment of a long term relationship, it is the desire of the Town Council to provide certain benefits, to establish certain distinct conditions of employment appropriate to the Assistant Town Administrator, and to set working conditions of the Assistant Town Administrator; and

WHEREAS, Assistant Town Administrator desires to accept employment as Assistant Town Administrator of the Town of Davie; and

WHEREAS, Davie and Assistant Town Administrator wish to formalize the terms of appointment as Assistant Town Administrator.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

Section 1. Duties.

Davie hereby agrees to employ Kenneth S. Cohen as Assistant Town Administrator of the Town of Davie to perform the functions and duties specified by the Town Administrator and to perform other legally permissible and proper duties and functions as the Town Administrator shall from time to time assign.

Section 2. Term.

In consideration for his services as Assistant Town Administrator, Mr. Cohen shall receive the following compensation and benefits:

A. Mr. Cohen shall serve as Assistant Town Administrator for Davie commencing _____, _____, 2000.

B. The employment of the Assistant Town Administrator shall be without definite term and shall continue until reassigned or terminated as provided herein.

C. Benefits shall be the same as other executive benefits provided to Town management employees.

D. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Assistant Town Administrator to resign at any time from his position with Davie, subject only to the provision set forth in Section 4 of this agreement.

E. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Town Administrator to terminate the services of the Assistant Town Administrator at any time, subject only to the provisions set forth in Section 3 of this Agreement.

Section 3. Termination and Severance Pay.

Severance pay shall be paid to Mr. Cohen over and above any accrued leave earned by him on the following provisions:

A. Upon voluntary resignation, no severance pay will be awarded. Mr. Cohen shall give at least thirty (30) days prior written notice to Davie of his intent to voluntarily resign.

B. Upon death while employed, no severance pay shall be awarded. Upon death if severance pay is being paid, severance pay shall cease.

C. Upon dismissal without cause, during the term of this agreement, as it may be extended from time to time, Davie shall give a minimum of sixty (60) days prior written notice to Mr. Cohen. In addition, six (6) months severance pay shall be awarded above and beyond all accrued leave.

(a) Upon dismissal for cause, no severance pay will be awarded. For the purposes of this agreement, "for cause" shall be defined as conviction of any felony whatsoever, or a misdemeanor directly relating to his power or duties or privileges or involving moral turpitude while in office or violating any Davie Charter provision, Ordinance or Resolution. For the purpose of the section, if Cohen pleads guilty or nolo contendere or is found guilty, he shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.

D. Upon the elimination of the position of Assistant Town Administrator, Mr. Cohen shall be paid in the same manner as if he were terminated without cause as provided hereinabove. If reassigned, Mr. Cohen will have the option of considering it the same as dismissed "without cause" and receive severance pay; or in the alternative, accept such reassignment subject to salary negotiations and agreement by both parties.

E. Severance pay, if awarded, shall be paid periodically as payroll rather than in a lump sum. Upon being reemployed full-time by another employer, Town's obligation to pay severance pay or provide any other benefits shall cease, except that if the salary and benefits at the place of reemployment are less than that being provided by Davie, then Davie shall pay the difference each month until conclusion of the periodic severance period. During the

period of severance pay, Town health insurance shall continue to be provided to Mr. Cohen and his dependents to the extent provided to Town executive management employees. No other benefits shall be owed or paid by Davie such as pension, life insurance, automobile, vacation and sick accruals or merit, etc. during the period that severance pay is paid.

Nothing herein is intended to deprive Mr. Cohen of his right to pay for Davie insurance as may be permitted pursuant to federal legislation ("COBRA").

Section 4. Resignation.

In the event Mr. Cohen voluntarily resigns his position with Davie, he shall give Davie thirty (30) days notice in advance, unless the parties agree otherwise.

Section 5. Salary.

Davie agrees to pay Mr. Cohen for services rendered pursuant hereto an annual base salary of \$77,500.00, payable in installments at the same time as other management employees of Davie are paid. Mr. Cohen shall also be eligible for cost of living adjustments as other management employees of Davie are paid.

Section 6. Performance Evaluation.

A. The Town Administrator shall review and evaluate the performance of the Assistant Town Administrator at least once annually. Said review and evaluation shall be consistent with the stated goals and objectives referred to in paragraph B below.

B. The Town Administrator and Assistant Town Administrator shall annually define goals and performance objectives that they determine necessary for the proper operation of Davie and in the attainment of the Town Administrator's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

C. If determined by the Town Administrator to be performing satisfactorily, the Town Administrator may elect to grant a salary increase within the first year of this agreement.

Section 7. Executive Days.

It is recognized that the Assistant Town Administrator must devote a great deal of time outside the normal office hours to business of Davie. Notwithstanding any other provisions of this agreement, Mr. Cohen shall receive fifteen (15) days of executive leave annually.

Section 8. Automobile.

Mr. Cohen's duties require that he shall receive a monthly car allowance of \$300.00.

Section 9. Vacation and Sick Leave.

Upon the effective date of this agreement, Mr. Cohen shall be credited with 40 hours of vacation leave and sick leave. Thereafter, he shall accrue twenty (20) vacation days per year. There shall be no maximum accrual amount except for separation purposes. In the event of involuntary termination without cause, there shall be a maximum payout of sixty (60) days of accumulated vacation time and 100% of accumulated sick leave up to the maximum cap of one thousand forty (1,040) hours. In the event of voluntary separation or in the event of termination pursuant to Section 3, there shall be a maximum payout of forty (40) days of accumulated vacation time and 50% of accumulated sick leave.

Section 10. Disability, Health, and Life Insurance.

A. Davie agrees to put into force and to make required premium payments for a term life insurance policy in the amount of \$75,000. Mr. Cohen shall name the beneficiary.

B. Davie agrees to provide medical, dental and disability insurance for Mr. Cohen and his dependents in the same manner as other management employees of Davie.

C. If Assistant Town Administrator is unable to perform his duties for a period of eight (8) successive weeks beyond any unused leave, or for forty (40) working days over a sixty (60) working day period, Davie shall have the option to terminate this agreement, subject to the severance pay requirements of Section 3.

Section 11. Pension.

Davie shall make the standard pension contribution for management employees. If employment is terminated without cause by Davie, then Davie shall pay the amount of the account balance not vested, grossed up for the Assistant Town Administrator's prior years effective tax rate.

Section 12. Dues and Subscriptions.

Davie agrees to budget and pay for, on an annual basis, subject to annual review and appropriation, the professional dues and subscriptions to join an/or remain a member of the International City/County Managers Association (I.C.M.A.), the Florida City County Managers Association (F.C.C.M.A.), Government Finance Officer Association (G.F.O.A.), Florida G.F.O.A., Dade/Broward Government Finance Officers and City Clerks Association necessary and desirable for Mr. Cohen continued professional participation, and growth as the Assistant Town Administrator, and for the good of Davie.

Section 13. Professional Development.

Davie does hereby agree to budget for and to pay the travel and subsistence expenses of Mr. Cohen for the professional and official travel pursuant to Davie's policy or practice, as the same now exists or may be hereafter modified. He shall be allowed, at a minimum, to attend the annual ICMA conference, Florida League of Cities Annual Conference, and the annual Florida City Managers Conference. Mr. Cohen shall be paid an additional lump sum of

\$650.00 annually over and above the base salary to cover the miscellaneous unreceipted out of pocket expenses incurred in attending said conferences and not reimbursed through Davie's policy.

Section 14. General Expenses.

Davie recognizes that certain expenses of a non-personal and job related nature are incurred by the Assistant Town Administrator, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense vouchers, receipts, statements or personal affidavits. The amount of general expenses paid by Davie shall be approved by the Town Administrator during the annual budget process or at other such times as appropriate. In addition, Mr. Cohen will also receive a monthly allowance of \$75.00 for use of the portable telephone to be supplied by Davie.

Section 15. Civic Club Membership.

Davie recognizes the desirability of representation in and before local civic and other organizations, and Mr. Cohen is authorized to become a member of civic clubs or organizations deemed appropriate by the Town Administrator, for which Davie shall pay all expenses. Mr. Cohen shall report to Davie on each membership that he has taken out at Davie's expense.

Section 16. Indemnification.

Davie shall defend, save harmless, and indemnify the Assistant Town Administrator to the extent allowed by law against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Mr. Cohen's official duties as Assistant Town Administrator.

Section 17. Bonding.

Davie shall bear the full cost of any fidelity or other bonds required of the Assistant Town Administrator under any law or ordinance.

Section 18. Other Terms and Conditions of Employment.

All provisions of the Town Charter and Code, and regulations and rules of Davie relating to vacation and sick leave, retirement and pension system contributions, holidays, tuition, and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the Assistant Town Administrator as they would to other employees of Davie, except as herein provided or modified.

Section 19. General Provisions.

A. The text herein shall constitute the entire agreement between the parties and cannot be amended except by written document executed with the same formalities as the original.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Assistant Town Administrator

C. This agreement shall become effective commencing _____, 2000.

D. If any provision of, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. Any claim, objection or dispute arising out of the terms of this agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida or the United States District Court for the Southern District of Florida.

F. The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the Town of Davie, through its Town Council, has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Acting Town Clerk, and Mr. Cohen has signed and executed this agreement, both in duplicate, the day and year first above written.

TOWN OF DAVIE, a municipal corporation

By _____
Harry Venis, Mayor

Kenneth S. Cohen

Attest: _____
Barbara McDaniel
Acting Town Clerk