

**Upper Captiva Fire & Rescue District**

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**BOARD OF COMMISSIONERS**

**REGULAR MEETING**

21 April 2023

**COMMISSIONERS & STAFF PRESENT:** Duncan Rosen, Van Hammond, Michael Filipczak, Bill Fry (Zoom), Bill Byrnes (Zoom), and Chief Jesse Cottrell

**ISLANDERS/GUESTS PRESENT:**

- Room: Lee Highsmith, Teresa Bolme, and Rich Gross
- Zoom: Kristi Riggle, Maggie Mooney, Swin Swinford, Sara Hammond, MJ Yafchak, Ipad, Zeke McDonald, and Patrick Duggan

1) **CALL TO ORDER** ([Recording](#)): Chairman Rosen called the meeting to order at 10:00 AM

2) **ADDITIONS/CHANGES/DELETIONS TO AGENDA** ([Recording](#)): Attorneys Maggie Mooney and Patrick Dugan will join at 10:15AM

3) **PUBLIC COMMENT ON AGENDA ITEMS:** None

4) **MINUTES** ([Recording](#)):

- Minutes of the 10 February 2023 Special Meeting were approved without change or comment
- Minutes of the 24 February 2023 Special Meeting were approved without change or comment
- Minutes of the 3 March 2023 Special Meeting were approved without change or comment
- Minutes of the 10 March 2023 Special Meeting were approved without change or comment
- Minutes of the 17 March 2023 Monthly Meeting were approved without change or comment
- Minutes of the 31 March 2023 Special Meeting were approved without change or comment
- Minutes of the 7 April 2023 Special Meeting were approved without change or comment

5) **NEW BUSINESS:**

- 42 A) Legal Review of Chief Contract ([Recording](#)) – Commissioner Fry, Attorney Mooney, and  
43 Attorney Dugan
- 44 • Ms. Mooney stated that:
- 45 ○ One nuance of the proposed contract is whether the Chief’s position is an  
46 exempt Executive position under the Fair Labor Standards Act (FLSA) with
- 47 ○ She asked if there were any other questions from the board on any other  
48 contract language; there were none
- 49 • Mr. Duggan provided background on the basis of his written opinion, based on his work  
50 on the Assistant Chief Denison settlement over a year ago and that:
- 51 ○ His baseball analogy is that most larger districts have an executive Chief who is  
52 the manager of firefighters (players) and that the UCFRD is unique in that our  
53 chief is like a “player manager” who would be impacted by the FLSA
- 54 ○ The Denison circumstance as the Assistant Chief was a “grayer” area than the  
55 primary chief would be but that it could still be arguable by an attorney that the  
56 our “player manager” was NOT exempt from the FLSA, could argue a case for the  
57 payment of a potentially large dollar amount in unpaid overtime, and that our  
58 existing legal insurance would not financially cover much of that issue
- 59 ○ His recommendation was to convert the proposed annual salary to an hourly  
60 rate for 53 hours per week/106 hours per bi-weekly pay period, schedule him on  
61 a more traditional Monday-Friday/9AM-5PM schedule with requirements for  
62 after-hours unpaid waiting/on-call, and pay any limited amount of actual  
63 overtime for hours worked/called out for an after-hours response (the chief  
64 being the 4<sup>th</sup> firefighter available for initial response for a fire alarm but the  
65 chief’s decision on whether his response was necessary for a medical or other  
66 non-fire call)
- 67 ○ Filipczak asked for a clarification under the FLSA for anything over 40-hours for  
68 most positions and 53-hours/week for firefighters, before overtime (one-and-  
69 one-half of base hourly pay) is required to be paid or 106 hours per 2-week pay  
70 period according to Dugan
- 71 ○ Dugan explained that if the chief is primarily “first response”, then the position  
72 would likely be found to be “non-exempt” (overtime required) but if he is not  
73 considered part of “first response” but he was a manager, then we would be  
74 “exempt”
- 75 ○ Duggan explained that, as long as the chief has discretion to decide which non-  
76 fire alarm calls to respond to when he is on-island but not “in office” working a  
77 normal 9-5 shift, then there is no FLSA requirement to pay overtime for hours  
78 “on call” or hours “waiting” but paid his base rate up to 106 hours per pay period

79 and his overtime rate for any actual responses that caused his work hours to be  
80 over 106 hours each pay period

81 ○ Duggan also explained that the key difference between AC Denison and Chief  
82 Peters is that Peters would NOT be required to live and sleep in the fire station  
83 24-hours/day when he was on-island; that was likely the key issue in the Denison  
84 case potentially holding the District responsible for paying for the “waiting time”,  
85 “sleep time”, “meal time”, and “on-call” that Denison was required to remain in  
86 the station during his shift (since his compensation didn’t include on-island  
87 private housing) AND Denison wasn’t the NUMBER ONE chief

88 ● Board Discussions and Decisions:

89 ○ Salaried, Mixed Salary/Hourly, or Hourly Only ([Recording](#)):

90 ■ Hammond ([Recording](#)): We shouldn’t be unduly complicating the  
91 contract compensation method but that he would prefer to keep it  
92 salaried, as the contract largely stands today

93 ■ Byrnes ([Recording](#)): Would prefer the mixed compensation process of  
94 salaried for 4 days/10 hours per day and hourly for any extra calls  
95 overtime

96 ■ Filipczak ([Recording](#)): He was swayed by Duggan’s recommendation to  
97 hourly only but wondered whether we should NOT pay him if there were  
98 no after-hours calls or pay him that base hourly rate for 106 hours per  
99 pay period, whether he worked them or not; shouldn’t we then  
100 guarantee him 53 hours each week in pay (106 hours each pay period),  
101 no matter how many hours he actually works, along with overtime if  
102 there was some unusual volume of calls or counsel him if he was  
103 responding too frequently and billing the District overtime

104 ■ Rosen ([Recording](#)): Comfortable with moving forward with the contract  
105 as currently drafted as salaried only as an FLSA exempt position, while  
106 looking into the cost for better employment liability insurance to cover  
107 the higher legal risk

108 ■ Fry ([Recording](#)): It appears that 2 or 3 of you are wanting to ignore  
109 Duggan’s advice after spending 3 weeks demanding a written legal  
110 opinion from a labor law attorney with FLSA expertise and continuing  
111 with the contract on an annual salary basis; although initially opposed to  
112 an hourly rate rather than salaried basis, I agree with Filipczak that we  
113 modify the current draft contract to hourly at 106 hours per pay period  
114 (\$77,000 salary/52 weeks/53 hours is \$27.94/hour base rate)

115 ○ Decisions ([Recording](#)):

- 116                   ▪ Hourly rate at Filipczak proposed rate of \$27.94 for a guaranteed 106  
117                   hours each week, whether he works the additional hours are worked or  
118                   not; then paying the overtime rate for hours over 106 hours per pay  
119                   period
- 120                   ▪ Schedule for eight daytime work days each week at 8-hours (minimum)  
121                   each day or 64 hours per pay period but guarantee Peters 106 hours  
122                   minimum paid hours
- 123                   ▪ Eliminate the clause that would pay a fixed \$500/24-hour shift for any  
124                   shifts that Peters would have to cover for last minute scheduling  
125                   cancelations of a part-time firefighter, paying only for actual response  
126                   times (if any) and not for “wait time” or “call time” in the station for that  
127                   24-hour period
- 128                   ▪ Convert retirement from 10% of \$77,000 to a fixed \$7,700/year
- 129                   ▪ Hammond suggested that if Peters wouldn’t accept a proposed hourly  
130                   contract that we might need to reconsider approving a salary-based  
131                   compensation contract, against our attorneys’ advice; Hammond will  
132                   discuss the path forward with Peters

133    B) Marine Operations ([Recording](#)):

- 134    • Fry stated that this was a discussion topic, not a decision topic, but as Treasurer  
135    concerned about short-term concern of multiple daily round trips (as many as 2 or 3)  
136    and long-term about whether to replace the damaged crew boat or not and, if so, when  
137    and for what missions
  - 138           ○ Chief Cottrell stated that until 2 weeks ago, there could have been as many as 5  
139           round trips per day for crew replacement and other errands (keeping the boat at  
140           the SHC dock during day/night) to now doing shift change on the Pineland  
141           Marina side and doing only 1 round trip each day
  - 142           ○ Fry thanked Chief for addressing that short-term concern by reducing the  
143           operating costs of the boat (fuel, maintenance, operating hours, etc.)
- 144    • Fry stated that the long-term discussion topic, after we have a new chief, is our  
145    continued operation of a boat for Marine Emergency Response Team, fire on the South  
146    Banks, patient evacuation, or other missions ([Recording](#)):
  - 147           ○ Response to South Banks home fire: Most of us likely believe that is the lowest  
148           priority since our two military trucks with water tanks and the
  - 149           ○ Patient Transport: We are not a “transport district” nor is it in our enumerated  
150           missions in the 2004 law that recodified our existence as a Fire & Rescue district;  
151           also not sure we have liability insurance coverage for those patient evacuations

- 152                   ○ Marine Emergency Response Team (MERT): Chief Cottrell stated that a properly  
153                   constituted MERT requires 3 firefighters on the boat (boat driver,  
154                   swimmer/retriever, and the 3d to help recover the swimmer/retriever and  
155                   patient); Chief Cottrell stated that we typically only send 2 firefighters since  
156                   service to the island would be impacted if 3 were sent out on the boat for a  
157                   MERT mission
- 158                   • Chief Cottrell stated that Captiva and Pine Island districts will now provide that service,  
159                   when needed (as they have provided backstop to our island since IAN damaged the  
160                   crew boat)
- 161                   • Byrnes stated that we do have response requirements for Cayo Costa and Cabbage Key  
162                   in our response zone but Fry restated that neither of those were in our legislatively  
163                   stated boundaries and would presumably be a Mutual Aid agreement issue

164

165 **6) RECURRING BUSINESS UPDATES:**

166

167                   A) Insurance Claim Update ([Recording](#))

168                   B) Chief's Report ([Recording](#))

169                   • 4 EMS calls, 3 fire investigation

170

171                   • 4 new hires starting in the next few months

172

173                   • New Utility Terrain Vehicle, diesel engine

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175                   • Moving to all battery-operated equipment to get away from gasoline requirements on  
176                   the island

177

178                   • Converting from Firehouse to ESO software as our reporting system over next 45 days

179

180                   C) Treasurer's Report ([Recording](#)) – Fry recommended tabling the February report (again)  
181                   because he forgot to post it on the website before the meeting, as well as the March  
182                   report

183                   D) FEMA Reimbursement Submission ([Recording](#)):

184                   • Fry briefly described the document without any discussion

185                   • FEMA rescheduled an On-Island Inspection for 2d week in June

186                   • Latest extension from the State for finalizing claim submission is now o/a 27 June 2023

187                   E) Accessway Maintenance & FGCU Project ([Recording](#)) – Commissioner Hammond

- 188       • Hammond spoke with new DRC debris removal contractor and they are doing ad hoc  
189       repairs worst areas as needed  
190       • DRC has hired new subcontractor with more and heavier equipment that will start  
191       shortly  
192       • Hammond asked Cottrell to have firefighter

193

194       F) New Garage Project ([Recording](#)) – MAJ Contracting laid the gravel for \$3,240 and  
195       contracted with Royal Corinthian to paint the garage for \$5,000, neither were in the  
196       approved FY23 budget by the last board

197       G) Equipment Replacement ([Recording](#))

198       7) **PUBLIC INPUT ON NON-AGENDA ITEMS** ([Recording](#)): None

199

200       8) **NEXT MEETING DATE** ([Recording](#)): Special Meetings 28 April 2023 and Monthly Meeting on  
201       19 May 2023, all at 10AM, as well as a joint UCCA/UCFRD meeting on 8 June with Lee BoC  
202       Ruane at 10AM

203

204       9) **ADJOURN** ([Recording](#)): **Move** by **Hammond**, **seconded** by Filipczak; meeting adjourned at  
205       1:08PM.

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207       Respectfully submitted,

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212

213       Bill Fry

214       Secretary