

RESOLUTION R-80-15

**A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT
WITH MICHAEL G. DZUGAN**

WHEREAS, Michael G. Dzugan has served the City of Wheaton as Assistant City Manager since October of 1991; and

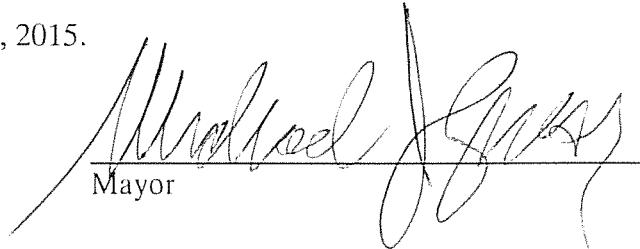
WHEREAS, Michael G. Dzugan's long tenure, experience, knowledge of Wheaton and competence as an administrator are factors that make him uniquely qualified to assume the role of Wheaton City Manager upon the retirement of Donald B. Rose; and

WHEREAS, the Corporate Authorities of the City of Wheaton have determined it is appropriate to appoint Michael G. Dzugan to the office of City Manager; and

WHEREAS, the terms and conditions of employment of the City Manager are within the scope of the government and affairs of the City of Wheaton.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor and City Council approve that Employment Agreement which is attached hereto and made a part hereof as if fully set forth as Exhibit 1.

ADOPTED this 21st day of December, 2015.



Michael G. Dzugan
Mayor

Attest:



Alan B. Gresk
City Clerk

Ayes:

Roll Call Vote:

Councilman Suess
Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo

Nays:

None

Absent:

Councilwoman Fitch

Motion Carried Unanimously

EMPLOYMENT AGREEMENT
(Michael G. Dzugan)

This employment agreement is approved, December 21, 2015 between the City of Wheaton, an Illinois Home Rule Municipal Corporation (hereinafter called "City"), as employer, and Michael G. Dzugan, as employee. Neither this agreement, nor any part hereof, will take effect until May 1, 2016.

WITNESSETH:

A. WHEREAS, the City of Wheaton is a Home Rule unit within the meaning of the Constitution of the State of Illinois and is authorized to exercise any power and perform any function pertaining to its government and affairs; and

B. WHEREAS, the terms and conditions of employment of the City Manager are within the scope of the government and affairs of the City of Wheaton; and

C. WHEREAS, Michael G. Dzugan has served as Assistant City Manager of the City of Wheaton in a competent and professional manner since October 7, 1991; and

D. WHEREAS, City Council has determined that Michael G. Dzugan should be appointed to the Office of City Manager, (WCC Chapter 2, Division 3, Sec. 2-141), pursuant to the terms and conditions of this employment agreement; and

E. WHEREAS, it is in the best interests of the City of Wheaton to employ Michael G. Dzugan as City Manager upon such terms and conditions which will promote his continued productivity and efficiency by providing Michael G. Dzugan with employment and financial security and by providing a fair, equitable and orderly means for termination of such employment; and

F. WHEREAS, the parties desire to enter into this agreement pursuant to the Home Rule authority of the City of Wheaton and pursuant to the provisions of Article VII, Section 10, of the Illinois Constitution; and

G. WHEREAS, Michael G. Dzugan desires to continue his employment with the City of Wheaton by accepting his appointment as City Manager upon the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING PREAMBLES together with the mutual covenants contained herein, the City of Wheaton, an Illinois Municipal Corporation, in the exercise of its Home Rule powers and its powers pursuant to the provisions of Article VII, Section 10, of the Illinois Constitution, and Michael G. Dzugan agree as follows:

1. RECITALS. The foregoing recitals are incorporated herein as representing the intent of the parties and as substantive terms and conditions.

2. DUTIES. The City, pursuant to the terms of this agreement, state law and City Ordinance, employs Michael G. Dzugan as City Manager of the City of Wheaton. Michael G. Dzugan shall perform all functions and duties, as specified by law and ordinance as well as such other legal, permissible and proper duties as the City Council may, from time-to-time, assign.

3. SALARY. The City agrees to pay Michael G. Dzugan for services rendered pursuant to this agreement an annual salary of One Hundred Sixty Five Thousand Dollars, (\$165,000.00), to be paid through the City's routine payroll procedures and which amount thereafter shall be determined annually by the City Council. The salary shall not be reduced during the first year of this agreement unless it is reduced at the same percentage as an across-the-board salary reduction for all City employees who are not members of a collective bargaining unit. Future pay raises for Michael G. Dzugan authorized by the City Council shall not be reduced unless the salaries for all other City employees, who are not members of a collective bargaining unit, are reduced by the same percentage.

4. APPOINTMENT AS CITY MANAGER/TERM OF AGREEMENT.

- A. Michael G. Dzugan's appointment as City Manager is indefinite in accordance with 65 ILCS 5/5-3-7.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Michael G. Dzugan at any time with or without cause, subject to the provisions set forth in Section 5 of this agreement.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Michael G. Dzugan to resign from his position with the City; subject to the provisions set forth in Section 5 of this agreement.

5. TERMINATION PROVISIONS.

A. The City Council may terminate the employment of Michael G. Dzugan without cause by advising him, in writing, certified mail, "return receipt requested," or by personal service of written termination notice. In the event said termination occurs while Michael G. Dzugan is willing and able or unable, as a result of a disability,* to perform the duties of City Manager, it shall be subject to the requirement that the City compensate Michael G. Dzugan in a sum equal to six (6) month's salary as termination pay subject to all routine withholding and deductions. Said compensation shall be based upon Michael G. Dzugan's salary at the time of termination and shall be paid out bi-weekly as part of the City's routine payroll procedures. In the event that Michael G. Dzugan obtains employment within the period in which he is receiving termination pay and benefits, he shall immediately advise the City Council, in writing, and his termination pay and benefits shall be discontinued upon the first date of re-employment.

B. If Michael G. Dzugan resigns or is terminated for cause as set forth in Section 5 C below, he shall only be entitled to those benefits that are routinely provided to other non-collective bargaining employees leaving City employment under the same circumstances, pursuant to City policy and any other applicable law.

C. Michael G. Dzugan shall be terminated by the City Council and shall receive no termination pay as provided in Subparagraph "A" of this Section 5 in the event of any of the following:

- (1) Michael G. Dzugan is not willing to perform the duties of City Manager; or
- (2) Michael G. Dzugan is terminated because of his conviction, plea of guilty to, a stipulation to the facts of, or plea in the nature of nolo contendere to a felony or a lesser offense if the initial charge against him was a felony; or

(3) Michael G. Dzugan is terminated because of his conviction for the following misdemeanors, including comparable misdemeanors of other states: Theft Under Three Hundred Dollars (\$300.00) (including theft of labor or services and retail theft); Deceptive Practices Under Three Hundred Dollars (\$300.00); Resisting or Obstructing a Police Officer; Obstructing Service of Process; Commercial Bribery; Impersonating a Police Officer or Judicial Officer; Unlawful Use of a Weapon; Solicitation for Sex; violation of any misdemeanor provision of Part E, "Offenses Affecting Governmental Functions," 720 ILCS 5/31-1 et seq.; Driving a Motor Vehicle or Operating Watercraft while under the influence of intoxicating liquor or drugs.

(4) Further, in the event Michael G. Dzugan shall be indicted or arrested for the violation of any criminal law or statute which, in the opinion of the City Council of the City of Wheaton, would reflect unfavorably upon the City or in any way interfere with his ability to discharge the duties of his position, then the City Council may request and, upon such a request, Michael G. Dzugan shall accept a leave of absence without pay pending a final determination of the criminal charges brought against Michael G. Dzugan. Should Michael G. Dzugan be cleared of all wrongdoing in connection therewith, he shall be restored to his position and all amounts of pay withheld shall be promptly paid to him.

(5) The provisions of subsection C 2 and 3 of this Section 5 shall control over the provisions of subsection A of this Section 5 if a disability and criminal circumstance coincide.

* "Disability" shall be determined in accordance with requirements of the American's With Disabilities Act and any other applicable disability laws.

6. DEFERRED COMPENSATION PLAN. The City shall execute the necessary agreements allowing Michael G. Dzugan to enroll in the ICMA Retirement Corporation Deferred

Compensation Plan or other reasonably similar program acceptable to the City. The City shall annually contribute Fifteen Thousand Dollars (\$15,000.00) to the deferred compensation plan.

7. AUTOMOBILE USE. The City shall provide Michael G. Dzugan with the unrestricted use of a City owned automobile. The City shall be responsible for paying all costs related to the operation of said automobile including, but not limited to, fuel, liability, property damage and comprehensive insurance, as well as the costs associated with the purchase, operation, maintenance and repair of said automobile. Applicable Internal Revenue Service rules and regulations will apply to the use of said automobile. Michael G. Dzugan shall be responsible for keeping a detailed record of all personal use of the City vehicle. This record shall be submitted in writing to payroll on a quarterly basis for Federal, State and Employment tax reporting.

8. INSURANCE COVERAGE.

- A. The City shall provide major medical health insurance for Michael G. Dzugan and his dependents as is provided for all other City employees.
- B. The City shall continue to provide those City life insurance policies which are in effect for Michael G. Dzugan on May 1, 2016.
- C. In case of termination due to disability, the City shall maintain in full force and effect and pay the costs of Michael G. Dzugan's individual and family health and life insurance policies for a period of twelve (12) months.
- D. In case of termination due to death, the City shall maintain in full force and effect and pay the costs of the health insurance policy for Michael G. Dzugan's spouse and dependent, but as to the dependent only so long as the dependent remains qualified under the law as a "dependent" for a period of two (2) years. Thereafter, the spouse and dependent, but only until the dependent is no longer a dependent under the law, may remain on the policy if they pay the annual premiums associated therewith. The provisions of Paragraph C supplement the provisions of 215 ILCS 5/367(j).

E. Disability Insurance. The City shall pay the annual premiums for a private disability income policy for Michael Dzugan until he reaches age 67, is terminated or resigns as set forth herein, or qualifies for a disability which terminates the requirement for premium payments under the policy, whichever occurs first. The policy shall provide disability income for him, or his designated beneficiary, equal to fifty percent (50%) of his then current salary in the event he becomes disabled, as defined by that policy of insurance. The cost of the premiums for the policy shall not exceed three percent (3%) of fifty percent (50%) of Michael G Dzugan's then current salary.

9. INDEMNIFICATION. The City shall defend, indemnify and hold harmless Michael G. Dzugan in conformance with 745 ILCS 10/2-302 and as may be amended from time to time and its precedential case law. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon with or without consultation with Michael G. Dzugan.

10. OTHER BENEFITS.

- A. Michael G. Dzugan shall be entitled to all other fringe benefits received by other City employees who are not members of collective bargaining units.
- B. Michael G. Dzugan shall receive vacation and sick leave benefits in the same manner as these benefits are provided to other City employees who are not in a collective bargaining unit. Upon termination or resignation from employment, Michael G. Dzugan shall be entitled to a cash payout for all accumulated vacation days at his then current rate of pay. This payout shall be in addition to the provisions contained in Section 5 of this agreement.
- C. The City shall pay, through its health insurance program and/or directly if there is no or inadequate applicable health insurance, for a comprehensive annual physical examination for Michael G. Dzugan to be performed by Michael G. Dzugan's family physician.

11. CONFERENCES, EDUCATION AND MEMBERSHIPS.

- A. The City shall pay for the reasonable costs of registration, travel and subsistence relating to training and/or education programs which serve to continue the professional development of Michael G. Dzugan.
- B. Michael G. Dzugan shall be reimbursed for all professional organization membership dues and the costs associated with attending any national, state or local manager's conference or meeting.

12. PERFORMANCE EVALUATION. The City Council shall review and evaluate the performance of Michael G. Dzugan at least once annually in advance of the adoption of the Annual Operating Budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Michael G. Dzugan. Criteria may be added to or deleted from as the City Council may, from time-to-time, determine in consultation with Michael G. Dzugan. Further, the Mayor shall provide Michael G. Dzugan with a summary written statement of the findings of the City Council and provide an adequate opportunity for Michael G. Dzugan to discuss his evaluation with the City Council.

13. RESIDENCY REQUIREMENT. During the period he is employed as Wheaton City Manager Michael G. Dzugan shall reside within the corporate limits of the City of Wheaton.

14. OUTSIDE EMPLOYMENT. Michael G. Dzugan shall not engage in any outside work activities without the consent of the City Council. Michael G. Dzugan shall notify the City Council, in writing, of his proposed engagement in any outside work. Such activities shall not be in conflict with the interests of the City. The City Council may require Michael G. Dzugan to divest himself of any business interests or activities deemed by the City Council, in its absolute discretion, as contrary to the best interest of the City of Wheaton.

15. GENERAL PROVISIONS.

- A. **PARTIAL INVALIDITY.** The invalidity of any provision of this agreement shall not impair the validity of any other provisions contained in the agreement. If any provision of this agreement is determined by a court of competent jurisdiction to

be unenforceable, that provision will be deemed severable and this agreement may be enforced with that provision severed or as modified by the court.

- B. CONFLICTS. In the event this agreement fails to provide for a benefit provided for in the City Personnel Manual or in the Illinois Compiled Statutes, the City Personnel Manual and the State Statutes shall supplement this agreement. In the event of a direct conflict between this agreement and the provisions of the City Personnel Manual, the provisions of this agreement shall supersede and control.
- C. ASSIGNMENT. This agreement is a contract of service and may not be assigned by Michael G. Dzugan.
- D. EXCLUSIVE JURISDICTION. Exclusive jurisdiction and venue for any and all litigation related to this agreement shall be in the 18th Judicial Circuit Court, DuPage County, Wheaton, Illinois.
- E. ENTIRE AGREEMENT. This agreement embodies the entire agreement and understanding between the parties and merges all prior discussions, agreements, understandings, negotiations and communications whether oral or written. There are no other agreements or understandings between or amongst the parties with regard to the subject matter of this agreement.
- F. MODIFICATION. This agreement shall not be modified or amended, in whole or in part, except by written instrument executed by both parties.
- G. BINDING EFFECT. This agreement shall be binding upon Michael G. Dzugan and, pursuant to the Home Rule powers of the City and its powers pursuant to the provisions of Article VII, Section 10, of the Illinois Constitution, this agreement shall be binding upon the City, its successors and assigns.

IN WITNESS WHEREOF, the City of Wheaton has caused this employment contract to be signed and executed in its behalf by its Mayor and duly attested to by its City Clerk and the employee has signed and executed this agreement on the date and year first written above.

CITY OF WHEATON,
AN ILLINOIS MUNICIPAL CORPORATION

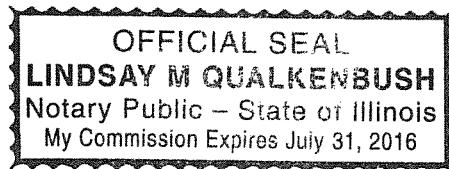

Mayor

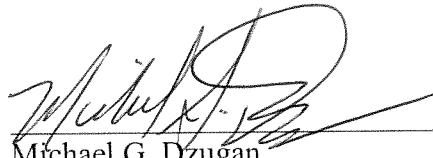
12-22-15

Dated

ATTEST:


City Clerk

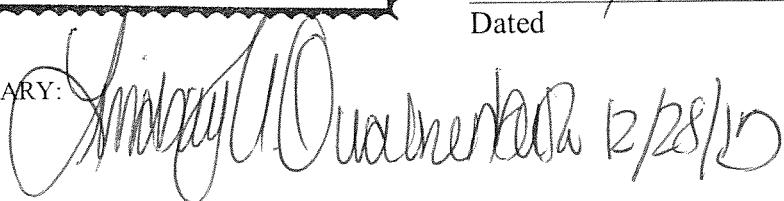



Michael G. Dzigan

12/23/15

Dated

NOTARY:


12/28/15

