



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN LINEHAN and THOMAS)
GAYNOR,)

Plaintiffs,)

v.)

C.A. No. 2024-0851-BWD

STANLEY A. MILLS, JR., individually and)
in his capacity as Mayor of the City of)
Rehoboth Beach; PATRICK GOSSETT,)
EDWARD CHRZANOWSKI, FRANCIS)
MARKERT, TIM BENNETT, TONI SHARP,)
and DONALD PRESTON, individually and in)
their capacities as Commissioners of the City)
of Rehoboth Beach Board of Commissioners;)
THE CITY OF REHOBOTH BEACH)
BOARD OF COMMISSIONERS; TAYLOUR)
TEDDER, City Manager of the City of)
Rehoboth Beach; and THE CITY OF)
REHOBOTH BEACH,)

Defendants.)

**DEFENDANTS STANLEY A. MILLS, JR., INDIVIDUALLY AND IN HIS
CAPACITY AS MAYOR OF THE CITY OF REHOBOTH BEACH;
PATRICK GOSSETT, EDWARD CHRZANOWSKI, FRANCIS MARKERT,
TIM BENNETT, TONI SHARP, AND DONALD PRESTON,
INDIVIDUALLY AND IN THEIR CAPACITIES AS COMMISSIONERS OF
THE CITY OF REHOBOTH BEACH BOARD OF COMMISSIONERS;
THE CITY OF REHOBOTH BEACH BOARD OF COMMISSIONERS;
AND THE CITY OF REHOBOTH BEACH’S OPENING BRIEF IN
SUPPORT OF DEFENDANTS’ MOTION TO DISMISS**

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Dated: October 18, 2024

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NATURE AND STAGE OF THE PROCEEDING

In the Fall of 2023, the City of Rehoboth Beach's (the "City") City Manager resigned after less than one year in office. As a result, the City initiated the hiring process to identify a qualified candidate for the vacant City Manager Position. On April 8, 2024, the City's Board of Commissioners (the "Board") unanimously adopted a resolution to hire Taylour Tedder ("Tedder") as the new City Manager. On April 9, 2024, the City executed an employment agreement with Tedder commencing employment on May 15, 2024 (the "Employment Agreement").

The City's execution of the Employment Agreement received significant public attention. Plaintiff Thomas Gaynor attended the Board's meeting on April 19, 2024 and publicly complained about the Employment Agreement and the City's decision to hire Tedder. Despite Plaintiffs' public expression of disagreement with the Employment Agreement, no litigation was filed prior to Tedder's start date. Accordingly, Tedder and his family relocated approximately 2,500 miles from Boulder City, Nevada to Delaware, and Tedder commenced employment on May 15, 2024.

After Tedder's start date, Plaintiffs filed a petition with the Delaware Department of Justice under Title 19, Chapter 100 regarding the Employment Agreement (the "FOIA Petition"). Plaintiffs' FOIA Petition alleged FOIA violations related to the City's hiring of Tedder and questioned the legality of the Employment

Agreement. Despite their voiced opposition to the Employment Agreement, Plaintiffs still did not pursue litigation. On June 26, 2024, the Delaware Department of Justice Office of the Attorney General (the “DOJ”) issued its decision on Plaintiffs’ FOIA Petition (the “DOJ Decision”). The DOJ Decision found the City committed FOIA violations regarding notice and public comment at meetings. The DOJ denied Plaintiffs’ requested relief regarding the legality of the Employment Agreement because it lacked jurisdiction to consider those claims under Title 29, Chapter 100. And, the DOJ did not find cause to issue “additional remediation” beyond the DOJ’s recommendation the Board “ratify the vote associated with the City Manager’s contract at a future meeting held in compliance with FOIA’s open meeting requirements.”¹ Still, Plaintiffs did not pursue litigation.

Thereafter, on July 8, 2024, the Board held a special meeting to ratify the Employment Agreement as directed in the DOJ Decision. Plaintiff Thomas Gaynor and Plaintiffs’ counsel attended the meeting to complain about the Employment Agreement. At the meeting, Plaintiffs’ counsel expressed opposition to the Employment Agreement and threatened prompt litigation. The Board voted unanimously that day to approve the Employment Agreement. Despite Plaintiffs’ claims they were prepared to file prompt litigation; Plaintiffs chose not to file this lawsuit for another five weeks.

¹ Compl. Ex. B.

On August 15, 2024, more than four months after the Board’s challenged action and three months after Tedder’s employment commenced, Plaintiffs filed this lawsuit. Counts I and II seek declaratory judgments that the Employment Agreement violates the City’s Charter (the “Charter”) and constitutes an illegal use of municipal taxpayer funds. Count III seeks invalidation of the Employment Agreement under 29 *Del. C.* § 10005(a) (the “FOIA Statute” or “FOIA”). Finally, Counts IV and V seek equitable rescission of the Employment Agreement and an injunction enjoining the City from payment of Tedder’s salary under the Employment Agreement.

On September 12, 2024, Defendants Stanley A. Mills, Jr., individually and in his capacity as Mayor of the City of Rehoboth Beach; Patrick Gossett, Edward Chrzanowski, Francis Markert, Tim Bennett, Toni Sharp, and Donald Preston, individually and in their capacities as Commissioners of the City of Rehoboth Beach Board of Commissioners; the City of Rehoboth Beach Board of Commissioners; and the City of Rehoboth Beach (collectively “Moving Defendants”)² moved to dismiss

² Pursuant to Court of Chancery Rule 19(a), a person must be joined as a party if, in that person’s absence, the Court cannot accord complete relief among existing parties. Here, two named Defendants are no longer Commissioners for the City. An election for two seats on the Board of Commissioners took place on August 10, 2024. Commissioner Craig Their and Commissioner Suzanne Goode replaced Commissioner Toni Sharp and Commissioner Tim Bennett. The Court is required by law to substitute the newly elected officials for the defendants that they have replaced for claims in the officials’ official capacity. *Korn v. New Castle Cnty.*, 2005 WL 396341, at *2 (Del. Ch. Feb. 10, 2005).

(the “Motion to Dismiss”) Plaintiffs’ Verified Complaint for Declaratory and Injunctive Relief and Rescission (the “Complaint”). On September 12, 2024, Defendant Taylour Tedder (“Tedder”) filed his Joinder to Defendants’ Motion to Dismiss.

This is Moving Defendants’ Opening Brief in Support of Their Motion to Dismiss.

STATEMENT OF RELEVANT FACTS

I. The City Manager Hiring Process.

On November 3, 2023, the City’s previous City Manager, Laurence Christian (“Christian”), resigned after less than one year. After Christian’s predecessor resigned in May 2022, it took the City several months to recruit and hire Christian, and now the City was faced with another employment search less than one year later.

From late 2023 through April 2024, the City engaged in the recruitment and hiring process to find a qualified City Manager.³ After months of searching, the City identified Tedder as the most qualified candidate. At a special meeting of the Board on April 8, 2024, the Board unanimously adopted a resolution “to appoint the selected candidate and to authorize the Mayor to execute and deliver an employment agreement as a condition of employment.”⁴ On April 9, 2024, the City executed the Employment Agreement.⁵

The City’s execution of the Employment Agreement received significant public attention and media coverage. Plaintiff Thomas Gaynor was present at the Board’s regular meeting on April 19, 2024 and participated in public comment regarding the Employment Agreement and Tedder’s qualifications.⁶ For reasons

³ Compl. ¶ 23, 29.

⁴ Compl. ¶ 29.

⁵ Compl. ¶ 30; Ex. C.

⁶ See Video of Mayor & Board of Commissioners of the City of Rehoboth Beach Regular Meeting April 19, 2024 at 2:00:58, *accessible at:*

unknown to Moving Defendants, Plaintiffs did not pursue litigation at this time, despite their apparent opposition to the Employment Agreement.

Tedder relocated to Delaware on May 14, 2024 and his employment commenced as planned on May 15, 2024.⁷ On May 31, 2024, nearly two months after the resolution to hire Tedder was passed, Plaintiffs filed a FOIA Petition alleging the City violated FOIA during the hiring process by failing to provide for public comment and improperly noticing prior meetings.⁸ The FOIA Petition also questioned the legality of the Employment Agreement.⁹

On June 26, 2024, the DOJ Decision on Plaintiffs' FOIA Petition was issued. The DOJ Decision found that the City violated FOIA by discussing the Employment Agreement in executive session, by failing to properly notice executive sessions in November 2023 and January 2024, and by failing to notice a public comment period on previous agendas.¹⁰ The DOJ Decision recommended the Board discuss the

<https://cityofreboth.civicweb.net/document/242915/?splitscreen=true&media=true> (last accessed October 14, 2024).

The Court may take judicial notice of the public meetings and videos of public meetings maintained by the City referenced herein under D.R.E. 201(b) because they are not subject to reasonable dispute.

⁷ Compl. Ex. C.

⁸ Compl. Ex. B.

⁹ *Id.*

¹⁰ *Id.*

Employment Agreement again in open session, allow for public comment and ratify the vote.¹¹

On July 8, 2024, the Board conducted a special meeting to comply with the DOJ Decision. Plaintiff Thomas Gaynor attended the July 8, 2024 meeting with Plaintiffs' counsel.¹² At the meeting, Plaintiff Thomas Gaynor and Plaintiffs' counsel both publicly commented on the Employment Agreement, and Plaintiffs' counsel threatened prompt litigation if the Employment Agreement was ratified.¹³ Following public comment, the Board unanimously ratified the Employment Agreement. Despite threatening prompt litigation, Plaintiffs stood down. On August 15, 2024, over four months after the resolution to hire Tedder and execution of the Employment Agreement, Plaintiffs initiated this action.

¹¹ *Id.*

¹² *See* Video of Mayor and Board of Commissioners of the City of Rehoboth Beach Special Meeting July 8, 2024 at 19:39 and 33:01, *accessible at:* <https://cityofrehoboth.civicweb.net/document/244408/?splitscreen=true&media=true&attachmenturl=%2Fdocument%2F244428> (last accessed on October 14, 2024).

The Court may take judicial notice of the public meetings and videos of public meetings maintained by the City referenced herein under D.R.E. 201(b) because they are not subject to reasonable dispute.

¹³ *Id.*

A. The City Manager’s Job Requirements.

In the Fall of 2023, the City posted a job listing (“Posting”) for the City Manager position.¹⁴ According to the Posting, the City was “seeking a proven leader” to serve as the Chief Administrative Officer of the City.¹⁵ The Posting identified the following duties of the City Manager:

- Advising the Mayor and Board of Commissioners on all personnel, fiscal, public safety, and planning and zoning matters affecting the City.
- Supervising the daily operations of the City government and providing leadership and direction to the heads of the City departments.
- Advising the Board of Commissioners on all ordinances, resolutions and other items required for adoption.
- Developing the annual operating and capital budget for the City.
- Representing the City at various meetings, functions and events throughout the community.¹⁶

The Posting specified the City was looking for a City Manager who will “bring a long-term perspective that will help the City prepare for continued excellence in the future.”¹⁷ The Posting also identified “a proven track record in

¹⁴ Compl. Ex. A.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

local government management” with “a strong financial background” as requirements for the City Manager position.¹⁸

B. The Charter Provisions.

The Charter provides the Board of Commissioners with broad powers and states, “[t]he government of The City and the exercise of all power conferred by this Charter ... shall be vested in The Commissioners of Rehoboth Beach.”¹⁹

Specifically, Section 1(a) provides the Board:

[M]ay sell, lease, hold, manage and control any such property or properties in such a manner as The Commissioners may deem expedient and proper for the purposes hereinafter to be expressed; *and may appoint such Officers and agents as shall be necessary or convenient for the management of the affairs of the City, and may fix and determine the compensation of such officers and agents [emphasis added]*.²⁰

Section 17(a) of the Charter further grants the Board the exclusive authority to appoint the City Manager.²¹ The Charter identifies the following duties and responsibilities of the City Manager:

- Supervise all City employees.

¹⁸ *Id.*

¹⁹ Rehoboth Beach, Del., C. (Charter) § 3.

²⁰ Rehoboth Beach, Del., C. (Charter) § 1. Additionally, under Section 8-a(c), the Board “shall by ordinance fix the salaries and compensation of the employees, officers and agents of the City.” Rehoboth Beach, Del., C. (Charter) § 8.

²¹ Rehoboth Beach, Del., C. (Charter) § 17(a) (“The Commissioners of Rehoboth Beach shall appoint a City Manager who shall be Chief Administrative Officer of the City”).

- Supervise the administration of the affairs of the City.
- Advise Board as to the financial condition and future needs of the City.
- Prepare and submit annual budget.

Section 17(b) of the Charter addresses the qualifications of the City Manager.

When the current Charter was enacted on December 20, 1963, Section 17(b) (the “1963 Provision”) read as follows:

He shall not, when originally appointed, be a resident of the City of Rehoboth Beach. His qualifications for that office shall meet the approval of The Commissioners of Rehoboth Beach; provided, however, that he shall at least have a degree in engineering from an approved college or university, or shall have served as City Manager of some other municipality for a period not less than four (4) years, or shall have had practical engineering experience for a period of not less than four (4) years. No member of The Commissioners of Rehoboth Beach shall, during the time for which elected, be chosen as City Manager.²²

Shortly thereafter, on December 21, 1965, the General Assembly amended Section 17(b) (the “1965 Amendment”) to read:

No person shall be appointed to the office of City Manager of the Commissioners of Rehoboth Beach unless he shall have received a degree in engineering from an approved college or university, or shall have served as City Manager of some other incorporated municipality for a period not less than four (4) years or shall have had practical engineering experience for a period not less than four (4) years; *provided, however, that nothing contained herein shall prohibit the*

²² 122nd General Assembly, Chapter 197, An Act Revising The Prior Charter Of The City Of Rehoboth Beach And Establishing A New Charter Therefor And Prescribing The Powers And Duties Of The Commissioners Of Rehoboth Beach (Dec. 20, 1963), *accessible at:* <https://legis.delaware.gov/SessionLaws/Chapter?id=29692>.

*Commissioners of Rehoboth Beach from imposing such other qualifications as may be deemed necessary [emphasis added]; And provided further, that no person holding the office of Mayor of the City of Rehoboth Beach or the office of Commissioner shall be chosen to be City Manager during his term of office as Mayor or Commissioner.*²³

C. Tedder’s Qualifications.

Tedder holds a Bachelor’s Degree in Economics from Emporia State University and a Master of Public Administration (M.P.A.), with additional Graduate Certificates in City/County Management and Public Finance, from Wichita State University.²⁴ Tedder is an ICMA Credentialed Manager (ICMA-CM) with the International City/County Management Association.²⁵ Tedder is also a Certified Economic Developer (CEcD) with the International Economic Development Council.²⁶

Not only does Tedder possess impressive and applicable educational qualifications, Tedder has prior experience as City Manager of municipalities comparable to Rehoboth Beach. A review of Tedder’s prior work experience shows

²³ 123rd General Assembly, Chapter 260, An Act To Amend Chapter 197, Volume 54, Laws Of Delaware, Entitled “An Act Revising The Prior Charter Of The City Of Rehoboth Beach And Establishing A New Charter Therefor And Describing The Powers And Duties Of The Commissioners Of Rehoboth Beach” To Delete The Requirement That The City Manager When Originally Appointed, Shall Not Be A Resident Of The City Of Rehoboth Beach (Dec. 21, 1965), *accessible at:* <https://legis.delaware.gov/SessionLaws/Chapter?id=29210>.

²⁴ Compl. Ex. D.

²⁵ *Id.*

²⁶ *Id.*

thirteen years working in city and county management, including over eight years of experience as an Assistant City Manager for the City of Leavenworth, Kansas and City Manager for Boulder City, Nevada.²⁷ During this time, Tedder was Assistant City Manager for nearly six years and City Manager for nearly three years.²⁸

One of the City Manager's primary responsibilities is supervising all City employees. According to the city's website, Boulder City, Nevada employs approximately 171 full-time employees and 207 part-time employees (378 year-round employees total).²⁹ Conversely, year-round the City of Rehoboth Beach employs approximately 124 employees (one-third of the number of employees of Boulder City).³⁰ During the summer months, the City of Rehoboth Beach employs approximately 130 additional seasonal employees – making the City's total employees 254 during the peak season (approximately two-thirds the size of Boulder City's workforce).³¹

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Boulder City, Nevada Human Resources website, *accessible at*: <https://www.bcnv.org/214/Human-Resources> (last accessed on October 8, 2024). The Court may take judicial notice of the number of Boulder City, Nevada's public employees under D.R.E. 201(b) because it is not subject to reasonable dispute.

³⁰ Compl. Ex. A.

³¹ *Id.*

The City Manager is also responsible for monitoring the financial condition of the City and preparing the City's annual budget. Boulder City has a year-round population of approximately 15,000 people and is the largest city by land area in the State of Nevada with an area of over 200 square miles.³² The City of Leavenworth, Kansas, where Tedder served as Assistant City Manager for nearly six years, has a population of approximately 36,000 residents.³³ The City of Rehoboth Beach has a year-round population of 1,636 with summer daytime populations up to 25,000.³⁴ The City of Rehoboth Beach has an area of less than two square miles. During Tedder's employment, Boulder City's 2022-2023 Budget (prepared by Tedder) projected \$131.94 million of revenue in FY2023 with budget expenditures of

³² See City of Boulder City Fiscal Year 2022-2023 Budget in Summary, *accessible at: <https://www.bcnv.org/ArchiveCenter/ViewFile/Item/1169>* (last accessed on October 8, 2024).

The Court may take judicial notice of Boulder City, Nevada's Fiscal Year 2022-2023 Budget in Summary under D.R.E. 201(b) because it is not subject to reasonable dispute.

³³ Compl. Ex. D.; *see also* City of Leavenworth Comprehensive Plan pp. 33-34, *accessible at: https://www.leavenworthks.org/sites/default/files/fileattachments/planning_amp_community_development/page/15591/2030_leavenworth_comprehensive_plan_final.pdf* (last accessed on October 14, 2024).

The Court may take judicial notice of the City of Leavenworth's Comprehensive Plan under D.R.E. 201(b) because it is not subject to reasonable dispute.

³⁴ Compl. Ex. A.

\$186.47 million.³⁵ The City of Leavenworth's 2020 budget (during Tedder's term as Assistant City Manager) projected revenue in excess of \$54 million.³⁶ The City of Rehoboth Beach's budget for FY2023-2024 was approximately \$36 million.³⁷

³⁵ See City of Boulder City Fiscal Year 2022-2023 Budget in Summary at p. 108, accessible at: <https://www.bcnv.org/ArchiveCenter/ViewFile/Item/1169> (last accessed on October 8, 2024).

The Court may take judicial notice of the City of Boulder City's Fiscal Year 2022-2023 Budget in Summary under D.R.E. 201(b) because it is not subject to reasonable dispute.

³⁶ See City of Leavenworth Adopted Budget for the 2020 Calendar Year at p. 50, accessible at: https://www.leavenworthks.org/sites/default/files/fileattachments/finance/page/9898/2020_adopted_budget_book_-_gfoa_1.pdf (last accessed on October 14, 2024).

The Court may take judicial notice of the City of Leavenworth's Adopted Budget under D.R.E. 201(b) because it is not subject to reasonable dispute.

³⁷ See City of Rehoboth Beach Annual Budget 2023-2024 at p. 44, accessible at: <https://www.cityofrehoboth.com/sites/default/files/2023-09/FY2024%20Annual%20Budget%20FINAL%20Report%202023-2024%2020230926a.pdf> (last accessed on October 8, 2024).

The Court may take judicial notice of the City of Rehoboth Beach's Annual Budget 2023-2024 under D.R.E. 201(b) because it is not subject to reasonable dispute.

STATEMENT OF THE QUESTIONS INVOLVED

I. Whether The City's Execution Of The Employment Agreement Complies With The Charter?

Proposed Response: Yes. The City hired a competent and qualified City Manager. The Charter provides the Board with the sole discretion to hire the City Manager and determine the City Manager's compensation. The Charter further authorizes the Board to impose such qualifications as may be deemed necessary for the management of the affairs of the City.

II. Whether Plaintiffs' Requests For Relief Are Time-Barred By The Applicable Statute Of Limitations And The Doctrine Of Laches?

Proposed Response: Yes. Plaintiffs' request under 29 *Del. C.* § 10005 is time-barred by the statute of limitations because Plaintiffs learned of the Board's challenged action more than sixty days prior to filing this lawsuit. Plaintiffs' remaining requests are time-barred under the doctrine of laches because Plaintiffs unreasonably delayed in filing this lawsuit and Defendants have been, and will continue to be, severely prejudiced as a result.

III. Whether Plaintiffs' Claims For Equitable Rescission And Injunction Fail To State A Claim For Relief?

Proposed Response: Yes. Plaintiffs' requests for equitable relief fail because Plaintiffs have an adequate remedy at law through the political process. Additionally, Plaintiffs' claim for equitable rescission fails because Plaintiffs cannot make Defendants whole.

ARGUMENT

I. Plaintiffs Fail To State A Claim Upon Which Relief May Be Granted.

Plaintiffs' Complaint challenges the Board's decision to hire a competent, experienced, and educated individual as City Manager. Plaintiffs ignore Tedder's prior experience serving larger municipalities as a city administrator, and arbitrarily take issue with the Board's decision to hire an individual without an engineering degree or four years of prior experience in the specific role of city manager.³⁸ The very nature of Plaintiffs' claims touch upon "public concerns of governmental accountability and fiscal responsibility."³⁹ Accordingly, this Court has been historically "cautious not to impermissibly encroach upon the independent authority" of political subdivisions regarding "public concerns of governmental accountability and fiscal responsibility."⁴⁰ When addressing this Court's deference to the decisions and actions of the various political subdivisions, this Court stated:

As a political subdivision, [the City] should be accorded a degree of deference necessary to manage its affairs for the benefit of its citizens. Embodied in this approach is the notion that most disputes concerning the County's policies are political in nature and must be resolved at the polls, not in the courts.⁴¹

³⁸ *See generally* Compl.

³⁹ *Korn v. New Castle Cnty.*, 2005 WL 396341, at *1 (Del. Ch. Feb. 10, 2005).

⁴⁰ *Id.*

⁴¹ *Id.*

Based upon an alleged violation of the Charter’s stated qualifications for an individual to be appointed the City Manager position, Plaintiffs seek a declaration that the Employment Agreement violates the Charter and constitutes an illegal use of funds. The Complaint seeks equitable rescission of the Employment Agreement and an injunction enjoining future action by the Board. These claims directly concern “governmental accountability and financial responsibility.”⁴² The proper avenue for relief in this circumstance is through the political process, not the judicial process. A decision invalidating a thoughtful and deliberate exercise of the Board’s power under the Charter would constitute an unnecessary and unprecedented encroachment into the Board’s authority under the Charter and the City’s exercise of home rule.

A. Legal Standards.

i. Rule 12(b)(6).

Pursuant to Court of Chancery Rule 12(b)(6), a defendant may move to dismiss the complaint for failure to state a claim upon which relief can be granted. When considering such a motion, “all well-pleaded factual allegations are accepted as true” and “the Court must draw all reasonable inferences in favor of the non-moving party.”⁴³ Under the Rule 12(b)(6) standard, dismissal is appropriate if “the

⁴² *Id.*

⁴³ *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 796 (Del. Ch. 2015).

plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”⁴⁴

A court’s analysis under Rule 12(b)(6) “is generally limited to the [c]omplaint, all documents incorporated by reference therein, and facts subject to judicial notice.”⁴⁵ A plaintiff’s claim “may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law.”⁴⁶

ii. Judicial Notice.

Trial courts may take judicial notice of matters that are not subject to reasonable dispute.⁴⁷ A matter is not subject to reasonable dispute if it “is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”⁴⁸

⁴⁴ *Id.*

⁴⁵ *Glen Allen Farm, LLC v. New Castle Cnty.*, 2020 WL 5800714, at *5 (Del. Ch. Sept. 29, 2020).

⁴⁶ *Bocock v. INNOVATE Corp.*, 2022 WL 15800273, at *15 (Del. Ch. Oct. 28, 2022).

⁴⁷ D.R.E. 201(b).

⁴⁸ *Id.*

This Court has established it is entitled to take judicial notice of “publicly available facts” when considering a motion to dismiss under Rule 12(b)(6).⁴⁹ In affirming this Court’s *In re General Motors* decision, the Delaware Supreme Court held, “where a plaintiff has no good faith basis for challenging the authenticity or legitimacy of an extraneous fact, that is otherwise subject to judicial notice, the trial court may properly consider such fact in ruling on a motion to dismiss without affording the plaintiff an opportunity to take discovery.”⁵⁰ This Court has recognized that “publicly filed documents are judicially noticeable on a motion to dismiss.”⁵¹ Delaware courts will also take judicial notice of facts regarding a municipality’s population.⁵²

II. Plaintiffs’ FOIA Claim Is Time-Barred Under 29 Del. C. § 10005(a) Because It Was Filed More Than Sixty Days After Plaintiffs Learned Of The Challenged Action.

Count III of the Complaint alleges the City violated FOIA at various public meetings during the City Manager hiring process and seeks “invalidation of

⁴⁹ *In re Gen. Motors (Hughes) S’holder Litig.*, 2005 WL 1089021, *7 (Del. Ch. May 4, 2005), *aff’d*, 897 A.2d 162 (Del. 2006).

⁵⁰ *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d at 172.

⁵¹ *In re Wheelabrator Techs. Inc. Shareholders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) (*citing Diceon Electronics, Inc. v. Calvary Partners, L.P.*, 772 F.Supp. 859, 861 (D. Del. 1991) (“On a motion to dismiss the Court is free to take judicial notice of certain facts that are of public record if they are provided to the Court by the party seeking to have them considered.”)).

⁵² *In re Ceresini*, 189 A. 443, 450 (Del. Super. Ct. 1936) (taking judicial notice of the fact population of the City of Wilmington does not materially exceed 110,000 inhabitants).

[Tedder's] employment pursuant to 29 *Del. C.* § 10005(a), and disgorgement of any consideration paid thereunder.”⁵³ Under Rule 12(b)(6), Count III should be dismissed because the Complaint was filed more than sixty days after Plaintiffs learned of the challenged action. Exhibit B of the Complaint (the DOJ Decision) establishes that Plaintiffs had notice of the alleged FOIA violations more than sixty days prior to filing this action because Plaintiffs' FOIA Complaint was filed prior to June 15, 2024 (*i.e.*, more than sixty days prior to the date of filing this action). Accordingly, Plaintiffs' FOIA claims under Count III were filed outside of the applicable statute of limitations under Section 10005(a) and are time-barred as a matter of law.

While Delaware's FOIA Statute provides this Court with jurisdiction to void an action taken by a public body at a meeting in violation of FOIA, the FOIA Statute requires prompt action and imposes a strict statute of limitations.⁵⁴ According to Section 10005(a), a “citizen may challenge the validity ... of any action of a public body *by filing suit within 60 days of the citizen's learning of such action* [*emphasis added*] but in no event later than 6 months after the date of the action.”

It is well-established in Delaware case law that a plaintiff's failure to file suit within sixty days of the plaintiff's learning of the challenged action bars relief under

⁵³ Compl. ¶ 73.

⁵⁴ 29 *Del. C.* § 10005(a).

Delaware's FOIA statute, even if the lawsuit is filed within six months of the time the challenged action was taken.⁵⁵ In *Reeder*, this Court found plaintiff's claim was untimely when he filed his complaint on August 10, 2005 regarding claims arising from public meetings on April 12, 2005 and April 29, 2005, because plaintiff's filing was submitted more than sixty-days after the plaintiff learned of the public action (even though it was filed within six months of the meeting).⁵⁶

The reasoning behind this narrow statute of limitations is obvious – that is, a court order invalidating an act of a public body often requires a complicated process to undo the public action and return all parties to the status quo. Furthermore, because the challenged public action may result in significant and immediate change by the public body, Delaware's FOIA statute requires diligence and promptness by citizens who seek its relief. This Court explained the reasoning behind the statute of limitations as follows:

By its plain terms, § 10005 of FOIA reflects the General Assembly's determination that FOIA claims must be filed promptly. This is made most obvious by the fact that the statute bars a FOIA claim filed after six months, even if the citizen did not learn of the public body's action until after that period ... Put plainly, § 10005 represents a legislative mandate that FOIA claims be brought in a timely manner or be

⁵⁵ *Common Cause of Delaware v. Red Clay Consolidated School District Board of Education*, 1995 WL 733401, at *1 (Del. Ch. Dec. 5, 1995) (dismissing plaintiffs' challenge of minutes published more than sixty days and less than six months before the complaint was filed where plaintiffs admitted they learned of the minutes upon their publication); *see also Reeder v. Delaware Dept. of Ins.*, 2006 WL 510067, at *8 (Del. Ch. Feb 24, 2006).

⁵⁶ *Reeder*, at *6.

forfeited.⁵⁷

Here, Plaintiffs allege the Board violated FOIA by giving improper notice for the planned discussions of the qualifications of City Manager candidates at its November 6, 2023 and January 8, 2024 executive sessions.⁵⁸ Plaintiffs further allege the Board violated FOIA by failing to notice time for public comment on its agendas for seven meetings in executive session regarding City Manager candidates held on November 6, 2023, December 1, 2023, December 11, 2023, January 8, 2024, March 11, 2024, March 18, 2024, and March 25, 2024, and a public Special Meeting held on April 8, 2024.⁵⁹ Since the Board took no action relevant to this lawsuit at any meeting other than at the April 8, 2024 meeting, the “validity” of any action taken by the Board prior to April 8, 2024 cannot be challenged under §10005(a). While Plaintiffs argue the Board’s action is legally invalid under the Charter, Plaintiffs do not allege any FOIA violation took place at the Board’s meeting on July 8, 2024 and, accordingly, are not entitled to relief under Section 10005(a) regarding action taken at that meeting. At the July 8, 2024 meeting, the Board did exactly as instructed by the DOJ. At a duly noticed and convened public meeting, the Board ratified the Employment Agreement after public comment.⁶⁰

⁵⁷ *Reeder*, at *8-9.

⁵⁸ Compl. ¶ 68.

⁵⁹ *Id.* at ¶ 69.

⁶⁰ Compl. Ex. B (“In this case, we recommend that the Board discuss the City Manager’s contract, including the compensation package, and ratify the vote

Plaintiffs filed this action on August 15, 2024. In order for Plaintiffs' claims to be timely under Section 10005(a), Plaintiffs' suit would have to challenge public action they learned of less than sixty days prior to August 15, 2024 (*i.e.*, Plaintiffs would have to prove they learned of the challenged action on or after June 15, 2024). Plaintiffs were aware of the challenged action prior to June 15, 2024, because both Plaintiffs filed a FOIA Petition regarding the challenged action with the Department of Justice on May 31, 2024.⁶¹ Furthermore, Plaintiff Thomas Gaynor was present at the Board's April 19, 2024 meeting and provided public comment opposing the Employment Agreement.⁶²

To the extent Plaintiffs contest the April 8, 2024 action of the Board, they clearly knew of the challenged action by the April 19, 2024 meeting, but waited

associated with the City Manager's contract at a future meeting held in compliance with FOIA's open meeting requirements.")

Plaintiffs claim the Board's July 8, 2024 special meeting did not rectify the April 8, 2024 violations. But, no facts in support of this claim are articulated.

⁶¹ Plaintiffs' FOIA Petition alleged "the City failed to follow open meeting requirements when hiring the new City Manager." *See* Compl. Ex. B.

⁶² *See* Video of the Mayor & Board of Commissioners Regular Meeting on April 19, 2024, *accessible at*: <https://cityofrehoboth.civicweb.net/document/242915/?splitscreen=true&media=true> (last accessed on October 10, 2024).

The Court may take judicial notice of the official agenda, minutes and video of the City's Mayor & Board meetings pursuant to D.R.E. 201(b).

until August 15, 2024, more than 60 days later, to commence suit.⁶³

Accordingly, because Plaintiffs learned of the challenged action more than sixty days prior to filing their lawsuit, FOIA shortcomings were cured on July 8, 2024, and no challenge to the July 8, 2024 action is asserted under FOIA, Plaintiffs' claim under Section 10005 fails, and Defendants respectfully request this Honorable Court dismiss Count III.⁶⁴

III. Plaintiffs' Remaining Claims Fail Under Rule 12(b)(6) Because There Is No Charter Violation.

Plaintiffs' Complaint alleges the Employment Agreement is "facially illegal" because it violates the Charter.⁶⁵ Plaintiffs allege the illegality stems from purported mandatory qualifications in Section 17(b) of the Charter. Additionally, Plaintiffs take issue with Tedder's compensation, and argue Tedder's "unconscionably large" salary should be invalidated, without providing any legal basis for doing so.

⁶³ Moreover, the shortcomings of the action on April 8, 2024 were cured via ratification on July 8, 2024. To the extent they contest the action of the Board on July 8, 2024, they offer no supportive facts or argument.

⁶⁴ One of the bases for Plaintiffs' FOIA claims is that the Board did not provide an opportunity for public comment prior to the execution of the Employment Agreement. Claims regarding the April meeting are time barred. Plaintiffs acknowledge public comment took place during the July 8, 2024 meeting. Compl. ¶ 8. Plaintiff Thomas Gaynor provided public comment on the Employment Agreement at the Board's April 19, 2024 and July 8, 2024 meetings, mooted FOIA claims regarding public comment.

⁶⁵ *See generally*, Compl.

Plaintiffs' narrow interpretation of Section 17(b) ignores the Charter's legislative history and the Delaware judiciary's hesitancy to interfere with legislative functions.⁶⁶ Accordingly, Plaintiffs cannot establish Defendants violated the Charter, and Plaintiffs claims must fail.

A. The Charter Authorizes The Board To Impose Other Qualifications As Necessary And Does Not Require Strict Compliance With Section 17(b).

The Charter provides the Board of Commissioners with broad powers and states, “[t]he government of The City and the exercise of all power conferred by this Charter ... shall be vested in The Commissioners of Rehoboth Beach.”⁶⁷ Section 1(a) provides the Board “may appoint such Officers and agents as shall be necessary or convenient for the management of the affairs of the City, and may fix and determine the compensation of such officers and agents.”⁶⁸ Section 17(a) of the Charter further grants the Board the exclusive authority to appoint the City Manager.⁶⁹

⁶⁶ Pursuant to Section 17(c) of the Charter, termination of Tedder's Employment Agreement is available “by a majority vote of the Commissioners.” Accordingly, the relief Plaintiff seeks is political.

⁶⁷ Rehoboth Beach, Del., C. (Charter) § 3.

⁶⁸ Additionally, under Section 8-a(c), the Board “shall by ordinance fix the salaries and compensation of the employees, officers and agents of the City.” Rehoboth Beach, Del., C. (Charter).

⁶⁹ Rehoboth Beach, Del., C. (Charter) § 17(a).

Section 17(b) of the Charter addresses the qualifications of the City Manager.

The Charter enacted on December 20, 1963, Section 17(b) read as follows:

[The City Manager] shall not, when originally appointed, be a resident of the City of Rehoboth Beach. His qualifications for that office shall meet the approval of The Commissioners of Rehoboth Beach; provided, however, that he shall at least have a degree in engineering from an approved college or university, or shall have served as City Manager of some other municipality for a period not less than four (4) years, or shall have had practical engineering experience for a period of not less than four (4) years. No member of The Commissioners of Rehoboth Beach shall, during the time for which elected, be chosen as City Manager.⁷⁰

Shortly thereafter, on December 21, 1965, the General Assembly amended

Section 17(b) to read:

No person shall be appointed to the office of City Manager of the Commissioners of Rehoboth Beach unless he shall have received a degree in engineering from an approved college or university, or shall have served as City Manager of some other incorporated municipality for a period not less than four (4) years or shall have had practical engineering experience for a period not less than four (4) years; *provided, however, that nothing contained herein shall prohibit the Commissioners of Rehoboth Beach from imposing such other qualifications as may be deemed necessary [emphasis added]*; And provided further, that no person holding the office of Mayor of the City of Rehoboth Beach or the office of Commissioner shall be chosen to be City Manager during his term of office as Mayor or Commissioner.⁷¹

⁷⁰ 122nd General Assembly, Chapter 197, An Act Revising The Prior Charter Of The City Of Rehoboth Beach And Establishing A New Charter Therefor And Prescribing The Powers And Duties Of The Commissioners Of Rehoboth Beach (Dec. 20, 1963), *accessible at: <https://legis.delaware.gov/SessionLaws/Chapter?id=29692>*.

⁷¹ 123rd General Assembly, Chapter 260, An Act To Amend Chapter 197, Volume 54, Laws Of Delaware, Entitled “An Act Revising The Prior Charter Of The City Of Rehoboth Beach And Establishing A New Charter Therefor And Describing

The 1965 Amendment transformed the terms of Section 17(b) from mandatory qualifications to qualifications imposed at the discretion of the Board. First, the 1965 Amendment removed the residency requirement. Second, the 1965 Amendment explicitly afforded the Board discretion in determining the proper qualifications by including the language “provided, however, that nothing contained herein shall prohibit the Commissioners of Rehoboth Beach from imposing such other qualifications as may be deemed necessary.”⁷²

The purpose of Section 17(b) is to ensure that a satisfactory candidate is appointed as City Manager while affording the Board the flexibility to impose qualifications it deems necessary. While the Charter outlines qualifications for the City Manager position, the provision clearly provides the Board with the discretion to impose such other qualifications as may be deemed necessary.⁷³ The 1963 Provision contained mandatory requirements involving the City Manager’s residency and qualifications and did not authorize the Board to impose other qualifications beyond the terms of 17(b). The 1965 Amendment and the inclusion of language authorizing the Board to “impose such other qualifications as may be

The Powers And Duties Of The Commissioners Of Rehoboth Beach” To Delete The Requirement That The City Manager When Originally Appointed, Shall Not Be A Resident Of The City Of Rehoboth Beach (Dec. 21, 1965), *accessible at*: <https://legis.delaware.gov/SessionLaws/Chapter?id=29210>.

⁷² Rehoboth Beach, Del., C. (Charter) § 17.

⁷³ *Id.*

deemed necessary” demonstrates the General Assembly’s intent for the Board to have the final say in the appropriate qualifications for the City Manager. Reading this provision as a whole, in consideration of the Board’s broad authorization to exercise all power conferred under the Charter, the Board has the discretion to require the stated qualifications “or impos[e] such other qualifications as may be deemed necessary.”^{74 75}

Furthermore, the term “City Manager” is undefined as it relates to prior experience and, accordingly, should not be strictly construed to mean candidates must have held that specific title. Nothing prohibits crediting many, many years of prior experience as an assistant city manager in lieu of a formal title and nothing compels the strict construction demanded by Plaintiffs. Furthermore, not every

⁷⁴ Rehoboth Beach, Del., C. (Charter) § 17.

⁷⁵ Furthermore, even if the Charter mandated a degree in engineering or prior years of experience as City Manager in another municipality, this provision is antiquated and reflects an era where municipal governments were far more limited than present day. These credentials cannot be viewed as relevant to today’s general assembly (which can approve Charter amendments pursuant to 22 *Del. C.* § 811). And, these credentials clearly are not material in the Board’s exercise of Home Rule. The lack of relevance of the Charter’s degree and experience requirement to the responsibilities of the City Manager position is highlighted by the fact that no other municipality in Sussex County requires an engineering degree or minimum years of service as a city manager/administrator to qualify for the position. Out of the twenty-four municipalities incorporated by Charter in Sussex County, twenty-three have a chief administrative officer. The City of Rehoboth Beach is the only municipality to address an engineering degree or minimum years of prior experience in its Charter, belying the significance of the Charter provision.

municipality employs a city manager – some municipalities employ town managers.⁷⁶ Applying the Plaintiffs’ arguments, an individual with 25 years of town manager experience would violate the Charter and be unqualified for the City Manager position. This conclusion is unreasonable in theory and in practice and is not in the best interest of the City of Rehoboth Beach.

Finally, Plaintiffs take issue with Tedder’s compensation, yet provide no legal basis to support their allegations of illegality. It is clear under Section 1(a) the Board “may appoint such Officers and agents as shall be necessary or convenient for the management of the affairs of the City, and *may fix and determine the compensation of such officers and agents [emphasis added]*.”⁷⁷ Plaintiffs seek an unreasonable and unsupported judicial interference with a clearly-defined legislative function. Accordingly, their allegations regarding the amount of Tedder’s compensation and its purported illegality are without merit.

B. The Employment Agreement Is Not Invalidated By Its Termination Provision Because The Employment Agreement Contains A Severability Clause.

Plaintiffs allege “the Employment Agreement is facially illegal since it does not comply with Charter Section 17(c), which provides that the City Manager may

⁷⁶ *E.g.*, Bethany Beach, Ocean View, Bridgeville, Elsmere, etc.

⁷⁷ Additionally, under Section 8-a(c), the Board “shall by ordinance fix the salaries and compensation of the employees, officers and agents of the City.” Rehoboth Beach, Del., C. (Charter).

be removed by a simple majority vote of the Commissioners.”⁷⁸ Section 19 of the Employment Agreement contains the following severability clause, “[i]f any section, paragraph, sentence, or clause of this Agreement is determined or declared to be invalid or unenforceable by any court of competent jurisdiction, the remainder hereof shall remain in full force and effect.”⁷⁹ Severability clauses are generally enforceable in Delaware.⁸⁰ “A clear and unambiguous severability clause permits the Court to sever the invalid language while enforcing the remainder of the agreement that does not violate the law.”⁸¹ Accordingly, the Employment Agreement does not violate the Charter and invalidation of the Employment Agreement is inappropriate.

IV. Even If Plaintiffs’ Interpretation Of The Charter Was Correct, Plaintiffs’ Claims Would Be Barred By The Doctrine Of Laches Because They Unreasonably Delayed In Filing Suit.

As established above, Plaintiffs’ FOIA claims under Count III are untimely because Plaintiffs filed suit more than 60-days after they learned of the City’s resolution to hire Tedder, and they take no quarrel with the July 8 ratification.⁸² Assuming *arguendo* this Court accepts Plaintiffs’ narrow interpretation of the

⁷⁸ Compl. ¶ 52.

⁷⁹ Compl. Ex. C.

⁸⁰ *Suppi Constr., Inc. v. EC Developments I, LLC*, 2024 WL 939851, at *5 (Del. Super. Ct. Mar. 4, 2024).

⁸¹ *Id.*

⁸² 29 Del. C. § 10005(a).

Charter, Plaintiffs' remaining claims under Counts I, II, IV and V should be dismissed under the doctrine of laches because Plaintiffs unreasonably delayed in filing suit and their delay will severely prejudice Defendants.⁸³

It is well-established in Delaware jurisprudence that a court of equity “moves upon considerations of conscience, good faith and reasonable diligence.”⁸⁴ Laches is an “equitable principle that operates to prevent the enforcement of a claim in equity where a plaintiff has delayed unreasonably in bringing suit to the detriment of the defendant or third parties.”⁸⁵ A defendant raising the defense of laches must show: “(1) that the plaintiff had knowledge of the invasion of his rights, (2) that the plaintiff unreasonably delayed in bringing suit to vindicate those rights, and (3) that the delay resulted in injury or prejudice to the party raising the defense or to a third party.”⁸⁶

In this case, Counts I, II, IV and V allege legal claims (declaratory judgments), but seek equitable relief (equitable rescission and/or an injunction).⁸⁷ If a plaintiff brings “an equitable claim seeking equitable relief, the case falls under the Court’s exclusive equity jurisdiction ... [and] the doctrine of laches applies and any

⁸³ In the event this Court rejects Defendants’ argument in Section I(A), Defendants’ laches argument also applies to Count III.

⁸⁴ *Federal United Corp. v. Havender, et al.*, 11 A.2d 331, 345 (Del. 1940).

⁸⁵ *Porach v. City of Newark*, 1999 WL 458624, at *3 (Del. Ch. June 25, 1999).

⁸⁶ *Id.*

⁸⁷ Compl. ¶¶ 55, 62 (“Plaintiffs have no adequate remedy at law.”).

applicable statute of limitations would apply only by analogy.”⁸⁸ When an “equitable claim seeks legal relief or a legal claim seeks equitable relief, the Court also will apply the statute of limitations by analogy, but with at least as much and perhaps more presumptive force given its quasi-legal status, and will bar claims outside the limitations period absent tolling or extraordinary circumstances.”⁸⁹ However, “if unusual conditions or extraordinary circumstances make it inequitable to allow the prosecution of a suit after a briefer ... period than that fixed by the statute, the court will not be bound by the statute, but will determine the extraordinary case in accordance with the equities which condition it.”⁹⁰

The laches inquiry is “principally whether it is inequitable to permit a claim to be enforced, the touchstone of which is inexcusable delay leading to an adverse change in the condition or relations of the property or the parties.”⁹¹ The degree of prejudice required to invoke laches may reflect the length of the delay and an otherwise “relatively short delay accompanied by more grievous or oppressive prejudice may also support laches.”⁹² This Court described the considerations of a

⁸⁸ *Kraft v. WisdomTree Investments, Inc.*, 145 A.3d 969, 983 (Del. Ch. 2016).

⁸⁹ *Id.*

⁹⁰ *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009) (citing *Wright v. Scotton*, 121 A. 69, 72 (Del. 1923)).

⁹¹ *Reid*, 970 A.2d at 183.

⁹² *Forman v. CentrififyHealth, Inc.*, 2019 WL 1810947, at *9 (Del. Ch. Apr. 25, 2019).

laches defense as follows:

Knowledge and unreasonable delay are essential elements of the defense of laches. The precise time that may elapse between the act complained of as wrongful and the bringing of suit to prevent or correct the wrong does not, in itself, determine the question of laches. What constitutes unreasonable delay is a question of fact dependent largely upon the particular circumstances. No rigid rule has ever been laid down. Change of position on the part of those affected by nonaction, and the intervention of rights are factors of supreme importance.⁹³

While the analysis into a laches defense is fact-intensive, this Court has recognized in appropriate cases a court may dismiss a case on the pleadings based on laches.⁹⁴ Even a facial inquiry into the facts alleged demonstrates the doctrine's applicability in this case.

A. Notice of Claim.

Defendants' challenged action occurred at a special meeting of the Board on April 8, 2024, when the Board approved a resolution to execute the Employment Agreement. Plaintiff Thomas Gaynor attended the Board's April 19, 2024 regular meeting and complained of the Board's execution of the Employment Agreement.⁹⁵

⁹³ *Havender*, 11 A.2d at 345.

⁹⁴ *Baier v. Upper N.Y. Inv. Co. LLC*, 2018 WL 1791996 (Del. Ch. Apr. 16, 2018).

⁹⁵ See Video of Mayor & Board of Commissioners of the City of Rehoboth Beach Regular Meeting April 19, 2024 at 2:00:58, accessible at: <https://cityofrehoboth.civicweb.net/document/242915/?splitscreen=true&media=true> (last accessed October 14, 2024).

The Court may take judicial notice of the public meetings and videos of public meetings maintained by the City referenced herein under D.R.E. 201(b) because they are not subject to reasonable dispute.

Plaintiffs filed a FOIA Petition with the DOJ on May 31, 2024 alleging FOIA violations at various Board meetings, including the April 8, 2024 meeting.⁹⁶ Accordingly, Plaintiffs had knowledge of the Employment Agreement on April 19, 2024, if not earlier.

B. Unreasonable Delay.

Laches case law is noticeably devoid of any specific requirement of the duration of the plaintiff's delay.⁹⁷ Delaware jurisprudence is clear that the temporal aspect of the delay is less critical than the reasons for it.⁹⁸ This Court has previously found an "unreasonable delay can range from as long as several years to as little as one month."⁹⁹

In *Porach*, this Court found the doctrine of laches barred a citizen plaintiff's claim to invalidate a City of Newark ordinance because it found plaintiff unreasonably delayed in filing suit by waiting five months.¹⁰⁰ Notably, the nature of the plaintiff's claim and factual timeline in *Porach* are nearly identical to the instant case.¹⁰¹ There, plaintiff sought a declaratory judgment to invalidate a city

⁹⁶ Compl. Ex. B.

⁹⁷ *Steele v. Ratledge*, 2002 WL 31260990, at *8 (Del. Ch. Sept. 20, 2002).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Porach*, at *4.

¹⁰¹ In *Porach*, the plaintiff argued that his delay was not unreasonable because he was also pursuing relief through the Department of Justice prior to filing his lawsuit. *Id.* The Court rejected this argument and held "[t]hat [plaintiff] was pursuing a complaint filed with the Department of Justice did not prevent him

ordinance passed on March 23, 1988.¹⁰² The city had taken action on the ordinance on May 26, 1988.¹⁰³ Similar to the instant case, the *Porach* plaintiff was aware of the ordinance upon or shortly after the passage of the ordinance and publicly spoke out against the ordinance at subsequent city meetings.¹⁰⁴ Additionally, like the Plaintiffs, the *Porach* plaintiff waited several months to file suit challenging the ordinance.¹⁰⁵ The *Porach* Court determined it was “an inescapable conclusion that ... plaintiff’s delay in bringing his claim for relief threatened to cause substantial harm or injury to the City [because] ... the status quo that plaintiff sought to protect ... had already changed radically by the time he filed suit.”^{106 107}

from filing an action in this Court, as the remedies are not mutually exclusive, nor did it relieve him of the obligation to do so in a timely manner.” *Id.* at *5. In this case, Plaintiffs were aware of and openly opposed the Employment Agreement while represented by legal counsel.

¹⁰² *Id.*, at *1.

¹⁰³ *Id.*

¹⁰⁴ *Id.*, at *4. The *Porach* plaintiff argued that defendant’s laches defense was unavailable because plaintiff had “openly and consistently opposed” the ordinance. *Id.* The *Porach* Court rejected this argument and found that plaintiff’s public opposition was not sufficient to put the city on notice plaintiff would seek to enjoin the ordinance. *Id.*, at *5. Here, Plaintiffs did not threaten a lawsuit until the Board’s regular meeting on July 8, 2024, three months after the initial resolution had passed and nearly two months after Tedder’s employment had commenced.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Defendants anticipate Plaintiffs may argue they were waiting for the resolution of their FOIA Petition before filing suit. This Court dismissed this exact argument in *Porach* (*see infra*). Furthermore, the Department of Justice issued its opinion regarding Plaintiffs’ FOIA Petition on June 26, 2024. For unknown

In the instant case, Plaintiffs' delay in filing this lawsuit was unreasonable and inexcusable. It is indisputable Plaintiffs were aware of the challenged action in April 2024, four months prior to filing suit, when Plaintiff Thomas Gaynor attended and participated in the April 19, 2024 Board meeting. Not only did Plaintiffs file a FOIA Petition regarding the Employment Agreement and hiring process for the City Manager on May 31, 2024, Plaintiffs were aware of and publicly opposing the Employment Agreement as far back as April 19, 2024.

Footnote 3 of the Complaint references a newspaper article published on July 8, 2024. The article discusses the Board's July 8, 2024 meeting whereby the Board ratified the April 8, 2024 resolution to execute the Employment Agreement. According to the article, Plaintiffs were present at the meeting and represented by legal counsel:

Attorney Ted Kittila, representing Tom Gaynor, part of the group that filed the FOIA request that led to Monday's meeting, warned the Commissioners of what could happen if Tedder remained in his position.

"The charter disqualifies this candidate from consideration. The actions of the city are illegal, and I ask the city reconsider this before we get into an expensive litigation. We are prepared to move forward with this litigation promptly."¹⁰⁸

At the conclusion of the July 8, 2024 meeting, the Board (after public

reasons, Plaintiff waited nearly two months from the Attorney General decision to pursue relief in this Court. *See* Compl. Ex. B.

¹⁰⁸ *See* Compl. FN 3.

comment) voted unanimously to ratify the April 8, 2024 resolution to execute the Employment Agreement. Despite threatening prompt litigation on July 8, 2024, Plaintiffs did nothing for another five weeks.¹⁰⁹

The reason for Plaintiffs' delay is hollow. The Complaint attempts to justify Plaintiffs' delay for no other reason other than a "City election was held on August 10, 2024, and Plaintiffs had no desire to have this litigation interfere with the election."¹¹⁰ Plaintiffs cannot explain this purported concern, and an election could have no bearing on a lawsuit unrelated to the election. The Employment Agreement was signed and delivered by the Board in April, and the election did not bear on the enforceability of the Employment Agreement. Furthermore, Plaintiffs' attempt to justify their delayed filing indicates Plaintiffs' delay in filing suit was intentional and avoidable, or perhaps strategic. Delaware courts require a "credible reason" for plaintiff's delay in filing suit, and Plaintiffs offer no such reason.¹¹¹ Regardless, they

¹⁰⁹ This delay is comparable to the plaintiff's delay in *Stengel v. Rotman*, 2001 WL 221512 (Del. Ch. Feb. 26, 2001). In *Stengel*, the Court held the doctrine of laches barred plaintiff's claim challenging his removal from office on the basis plaintiff "took no steps to challenge the process before the special meeting, even though he was at all times represented by competent counsel and had this § 225 action pending ... [e]ven after the election was held, [plaintiff] did not challenge the election ... [t]o the contrary, his behavior in the Maryland Action was consistent with his assent to the results of the election ... [and plaintiff's] counsel only came up with the argument that the election was improper when determining how to respond to the defendants' summary judgment motion in early November 2000 - over a month and a half after the new board had been seated.")

¹¹⁰ Compl. ¶ 80.

¹¹¹ *Steele*, at *10.

did not act swiftly and proffer no valid reason for such dilatory action, particularly while in the meantime they made threats but did not act while Tedder and his family moved 2,500 miles in the interim. Accordingly, Plaintiffs' delay in filing this lawsuit was unreasonable and sufficient to find Plaintiffs' claims are time-barred under the doctrine of laches.

C. Prejudice.

The final element of a laches defense is a detrimental change in position¹¹² or prejudice to the defendant and/or third parties caused by the plaintiff's unreasonable delay.¹¹³ A lawsuit seeking invalidation of the act of a public body requires a complicated remedy and often results in unintended consequences for the public body, its citizens and related third parties.¹¹⁴ Furthermore, the invalidation of public acts by the judiciary opens the door to future judicial interference in purely legislative functions – a practice that should be met with extreme caution.¹¹⁵ Additionally, the Board, consisting of the City's elected officials, is in the best

¹¹² *Medek v. Medek*, 2008 WL 4161017, at *40 (Del. Ch. Sept. 10, 2008).

¹¹³ *Steele*, at *10.

¹¹⁴ *Ianni v. Dep't of Elections of New Castle Cnty.*, 1986 WL 9610, *7 (Del. Ch. Aug. 29, 1986).

¹¹⁵ Judicial review of the actions of public entities is extremely limited under Delaware law and typically requires an extremely narrow statute of limitations. For example, judicial review of a municipal referendum is limited to a twenty-day statute of limitations under 22 *Del. C.* § 820(a). Judicial review of actions taken in violation of the FOIA Statute is limited to a 60-day statute of limitations after the citizen's learning of the action under 29. *Del. C.* § 10005(a). *See also*, *Korn*, 2005 WL 396341, at *1.

position to determine what is best for the City – not the court system.¹¹⁶

There are “unusual conditions and extraordinary circumstances” that warrant the application of laches even though Plaintiffs’ remaining claims under Counts I, II, IV and V may not be time-barred by a statute of limitations as a matter of law.¹¹⁷ This Court’s analysis in *Porach* and *Reeder* only illustrate the importance of prompt action to avoid prejudice to a defendant when a plaintiff files suit to invalidate a public body’s action after the fact.¹¹⁸ In *Steele*, this Court explained the considerations for determining whether prejudice has or will occur if the plaintiff’s requested relief is granted:

For purposes of laches, prejudice may occur in different ways. The prejudice might be procedural in nature, for example, where the delay prevents a party from calling crucial witnesses who could either help prove the party's case or refute the opposing party's claims, but where those witnesses have become unavailable because of intervening disappearance, illness, or death. Prejudice can also be substantive, such as where a party suffers a financial detriment by relying on the plaintiffs’ failure to seek relief in a timely manner.¹¹⁹

¹¹⁶ See *Korn*, 2005 WL 396341.

¹¹⁷ *Kraft*, 145 A.3d at 983.

¹¹⁸ *Supra* at Section I(a) (*Reeder*, at *8-9. (“By its plain terms, § 10005 of FOIA reflects the General Assembly's determination that FOIA claims must be filed promptly. This is made most obvious by the fact that the statute bars a FOIA claim filed after six months, even if the citizen did not learn of the public body's action until after that period ... Put plainly, § 10005 represents a legislative mandate that FOIA claims be brought in a timely manner or be forfeited.”)).

¹¹⁹ *Id.*

i. Prejudice Against Moving Defendants.

Plaintiffs' requested relief would cause significant and complicated harm to the City of Rehoboth Beach. Since Tedder's employment commenced on May 15, 2024, the City has expended significant funds in furtherance of Tedder's employment for months. Pursuant to the terms of the Employment Agreement, the City agreed to provide Tedder with a salary of \$250,000 annually and a \$50,000 moving expense reimbursement. In addition to Tedder's monetary compensation, the City has also expended significant City resources related to Tedder's insurance and other benefits (retirement, allowances, etc.).¹²⁰

At this point, it would be nearly impossible for the City to undo the financial transactions and expenses related to the commencement of Tedder's employment. Furthermore, to require such action would impose a substantial hardship on Defendants, constitute a waste of City resources, and be logistically impossible to enact with fidelity. Conversely, if Plaintiffs had initiated an expedited lawsuit when they first found out about the Employment Agreement and prior to Tedder's transcontinental relocation, the City and Tedder would have been on notice that the Employment Agreement could be invalidated, and the City could have been able to make informed decisions regarding delaying commencement of the Employment Agreement. However, because Plaintiffs delayed this suit for months – without

¹²⁰ Compl. Ex. C.

explanation – Moving Defendants and Tedder reasonably assumed no litigation was forthcoming.¹²¹ Accordingly, the doctrine of laches bars Plaintiffs’ claims because Plaintiffs’ delay in filing suit has caused, and will continue to cause, significant prejudice to Moving Defendants if relief is awarded.

ii. Prejudice Against Tedder.

It is indisputable that litigation did not commence until months after Tedder executed the Employment Agreement. While Plaintiffs were intentionally waiting to file the Complaint, Tedder resigned from his position as City Manager of Boulder City, Nevada and relocated more than 2,500 miles to Rehoboth Beach, Delaware. Presumably Boulder City hired a new City Manager to replace Tedder upon his departure and his previous position is no longer available.

Here, Plaintiffs seek invalidation of Tedder’s employment agreement and disgorgement of any consideration paid thereunder (*i.e.*, Tedder’s salary, health insurance, retirement, allowances, etc.). Notably, because Plaintiffs delayed in filing this action and did not move to expedite, their requested relief cannot be issued until many months after Tedder’s employment commenced, requiring the return of several months of Tedder’s salary and imposing a significant and extreme hardship

¹²¹ In *Porach*, this Court held plaintiff’s public opposition did not put the city on notice of imminent litigation. Rather, his open and consistent opposition of the ordinance at issue only emphasized the plaintiff had knowledge of the invasion of his rights. 1999 WL 458624, at *4-5.

on Tedder and his family. Not only would Tedder be forced to repay his entire salary, Tedder gave up his prior employment and moved across the country, while Plaintiffs sat back. Conversely, if Plaintiffs had filed suit immediately following the Board's execution of the Employment Agreement, Tedder would have had notice that his job and salary were at risk, and would have been able to make informed decisions regarding how to proceed with his career and cross-country relocation with his family. Accordingly, the doctrine of laches bars Plaintiffs' claims because Plaintiffs' delay in filing suit has caused, and will continue to cause, significant prejudice to Tedder.

iii. Prejudice Against the City

Terminating Tedder's employment and locating a new candidate is a waste of valuable City resources and would severely prejudice the City and its citizens¹²² when the City has already hired a demonstrably qualified City Manager. Attracting and recruiting qualified candidates for the City Manager position is challenging and requires significant time and effort. Since the Employment Agreement was approved on April 8, 2024, any other viable candidates have likely accepted other positions. Accordingly, invalidating the Employment Agreement would force the City to function without a City Manager while utilizing additional City resources to

¹²² Tedder's hire has not harmed the citizenry, but nullification of his contract certainly would cause significant expense.

restart the hiring process to the detriment of the City and its citizens. Furthermore, Tedder has already been employed for several months and all initiatives and projects Tedder is implementing would be interrupted indefinitely, constituting a waste of City resources and negatively affecting City employee productivity and morale.

Delaware courts historically hesitate to substitute their judgment for the good faith acts of municipalities absent evidence of fraud or bad faith, and will defer to “the field of discretion which the law has assigned to subordinate political or municipal bodies.”¹²³ The City’s unanimous hiring of an objectively qualified City Manager with long-term goals for the betterment of the City was not in bad faith. Tedder previously held a comparable position at a larger municipality. His resume is remarkable. It is well-established that “the remedy of invalidation is a serious

¹²³ See *Lynch v. Town Council of Georgetown*, 180 A. 594, 596 (Del. Ch. 1935) (“Now as a general proposition, no court will, in the absence of a showing of bad faith or fraud, assume to invade the field of discretion which the law has assigned to subordinate political or municipal bodies.”); see also *Taylor v. Smith*, 115 A. 405, 408–09, (Del. Ch. 1921) (“At all events, the Legislature referred to the council the discretionary power of approving, or disapproving, the judgment of the department in the matter of plans and estimated costs. This particular plan, whatever the court might think of it, did as a matter of fact receive the approval of the council, the body designated by the Legislature to pass judgment upon it. There is no charge, or even pretense, of fraud or corruption with which the council's approval may be tainted. If the council displayed bad business judgment in approving the plan in question, as is contended by the solicitor for the complainants, that fact does not warrant the court in interfering, for if there is anything well settled it ought to be this, that in matters involving the exercise of discretion, courts have no right to substitute their judgment of what is best for the judgment of the officers upon whom the law casts the responsibility of deciding.”)

sanction and ought not to be employed unless substantial public rights have been affected and the circumstances permit the crafting of a specific remedy that protects other legitimate public interests.”¹²⁴ This Court explained the proper considerations when analyzing a request for an injunction to invalidate a public act: “Even where factual situations are presented which would justify the granting of injunctive relief, this power should be limited to preventing or deterring a future act. An injunction is not intended to punish past wrongs, especially if to do so will threaten greater injury to third parties or to the public generally than will befall the moving party if an injunction does not issue.”¹²⁵ These considerations are directly applicable to this action. That is, far more harm would result from invalidating the City’s act of hiring Tedder, than would result if Tedder (a qualified individual) remains City Manager.

Therefore, Moving Defendants are entitled to judgment in their favor because it is established by the pleadings: (1) Plaintiffs had knowledge of their claims in April 2024; (2) Plaintiffs unreasonably delayed in pursuing those claims until August 2024; and (3) Plaintiffs’ unreasonable delay will cause significant harm and prejudice (if their relief is granted) to Moving Defendants, Tedder, and City of Rehoboth Beach citizens, based on the narrow interpretation of an antiquated Charter provision. Accordingly, the doctrine of laches bars Plaintiffs’ relief and entitles

¹²⁴ *Ianni*, 1986 WL 9610, *7).

¹²⁵ *Levy v. Bd. of Educ. of Cape Henlopen Sch. Dist.*, 1990 WL 154147, at *7 (Del. Ch. Oct. 1, 1990).

Moving Defendants to dismissal of the Complaint with prejudice.

D. No Injustice.

While a balancing of the equities is not a required factor in the laches analysis, this Court will on occasion review the record to confirm the application of laches will not result in injustice.¹²⁶ Furthermore, Plaintiffs do not allege any specific or identifiable harm to the City if Tedder remains City Manager.¹²⁷ While it is true that Tedder does not possess an engineering degree or the total requisite years of official city manager experience (according to Plaintiffs' unreasonable interpretation of the Charter provisions), there is no question the Board has the authority to determine the proper qualifications for City Manager or that Tedder has comparable experience at larger municipalities.

A narrow interpretation of an antiquated charter provision cannot be the basis in equity to invalidate the Employment Agreement. The City has complied with the City Charter in good faith. There is no allegation that the Board had a conflict of interest.

The Board determined Tedder was the most qualified candidate two times. No injustice will result from the Court's finding that laches precludes Plaintiffs'

¹²⁶ *Porach*, 1999 WL 458624, at *5.

¹²⁷ *See Campbell v. Commissioners of Town of Bethany Beach*, 139 A.2d 493, 497 (Del. 1958) (“When there is a dispute of opinion between contending factions in a municipality, the courts will enforce the considered judgment of the governing authorities.”).

requested relief, and a finding for Plaintiffs will compel the unwinding of a situation that cannot be unwound. For these reasons, Defendants are entitled to judgment in their favor and dismissal of the Complaint.

V. Plaintiffs Are Not Entitled To Equitable Rescission Because They Have An Adequate Remedy At Law And Cannot Make Defendants Whole.

Rescission “is not given for every serious mistake and it is neither given nor withheld automatically, but is awarded as a matter of judgment.”¹²⁸ It is a well-established principle of equity that “a plaintiff waives the right to rescission by excessive delay in seeking it,” and “[i]t is not a matter of laches and there is no requirement that the defendant show prejudice from the delay ... [r]ather it is the plaintiff’s burden to prove promptness, not the defendant’s to prove delay.”¹²⁹

Rescission is a remedy designed to restore the parties to the status quo ante.¹³⁰ The “decision to award rescission is committed to the Court’s discretion ... [and] it is well established that rescission generally is appropriate only when the plaintiff offers and is capable of restoring the defendant's former status quo.”¹³¹ In *Midland Grange*, this Court found plaintiff was not entitled to rescission because it could not demonstrate that if the conveyance at issue was rescinded, plaintiff would be able to

¹²⁸ *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 174 (Del. 2002).

¹²⁹ *Id.*

¹³⁰ *Midland Grange No. 27 Patrons of Husbandry v. Walls*, 2008 WL 616239, at *9 (Del. Ch. Feb. 28, 2008).

¹³¹ *Id.*

restore defendant to its status quo ante by reimbursing it for the substantial sums defendant expended.¹³² The Court’s reasoning in *Midland Grange* is directly applicable to this case. The City and Tedder expended significant sums regarding the hiring of Tedder as City Manager, including payment of Tedder’s salary and moving expenses. Plaintiffs’ Complaint lacks any representation that Plaintiffs would be willing or even able to return Defendants to their status quo ante.

Additionally, under Section 17(c) of the Charter, the City Manager “may be removed by a majority vote of the Commissioners.”¹³³ Accordingly, the appropriate avenue to relief is through the political process and procedures set out by the Charter, not by way of judicial intervention. Therefore, Plaintiffs’ equitable rescission claim fails.

VI. Plaintiffs Are Not Entitled To An Injunction Because They Cannot Prove Actual Success On The Merits, Irreparable Harm Or That The Balance of Equities Tips In Their Favor.

Count V of the Complaint seeks “an order enjoining any and all payments of municipal funds made or to be made to Tedder under the Employment Agreement.”¹³⁴ To obtain a permanent injunction, a plaintiff must show: “(1) actual success on the merits of the claims; (2) that the plaintiff will suffer irreparable harm

¹³² *Id.*

¹³³ Rehoboth Beach, Del., C. (Charter) § 17.

¹³⁴ Compl. ¶ 88.

if injunctive relief is not granted; and (3) that the harm to the plaintiff outweighs the harm to the defendant if an injunction is granted.¹³⁵

Plaintiffs allege entitlement to an injunction because “the Employment Agreement is the result of multiple FOIA violations, violates the Charter, and constitutes an illegal use of municipal funds.”¹³⁶ As established above, Plaintiffs’ FOIA claim is time barred by the statute of limitations. Furthermore, the plain language of the Charter and the Charter’s legislative history prove the Board did not violate the Charter and has the discretion to impose the necessary qualifications for City Manager. Plaintiffs cannot prove actual success on the merits because Plaintiffs’ claims are untimely, fail as a matter of law or are barred by the doctrine of laches. Accordingly, Plaintiffs cannot meet the standards to prove they are entitled to a permanent injunction and Count V should be dismissed.

The remedy of a permanent injunction “requires a showing that other remedies are inadequate.”¹³⁷ Delaware Courts have recognized “a showing of irreparable harm is one way to demonstrate inadequacy of remedies at law.”¹³⁸ A plaintiff may also demonstrate the inadequacy of remedies at law by showing that the defendant acted

¹³⁵ *Benner v. Council of Narrows Ass’n of Owners*, 2014 WL 7269740, at *11 (Del. Ch. Dec. 22, 2014).

¹³⁶ Compl. ¶ 86.

¹³⁷ *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d 1205, 1228 (Del. Ch. 2022).

¹³⁸ *Id.* at 1232.

in such a way that the plaintiff may be required to bring more than one suit to effectuate his legal remedy; showing that although money would be an adequate remedy, the defendant is insolvent, and the judgment is not collectible; or showing that the plaintiff is entitled to damages if damages could be measured with any reasonable degree of accuracy, but under the facts damages are so speculative that any award is likely to be inadequate.¹³⁹ Here, Plaintiffs have an adequate remedy through the political process. Accordingly, their request for an injunction fails.

Plaintiffs cannot establish irreparable harm or a lack of adequate remedy. Plaintiffs allege the “Employment Agreement threatens Plaintiffs and all taxpaying residents of the City with irreparable harm,”¹⁴⁰ and seek “an order enjoining any and all payments of municipal funds made or to be made to Tedder under the Employment Agreement.”¹⁴¹

Plaintiffs’ allegation they lack an adequate remedy fails miserably. Pursuant to Section 17(c) of the Charter, the City Manager “may be removed by a majority vote of the Commissioners.”¹⁴² Accordingly, the appropriate avenue to relief is through the political process and procedures set out by Charter, not by way of judicial intervention.

¹³⁹ *Id.* (internal citations omitted).

¹⁴⁰ Compl. ¶ 87.

¹⁴¹ Compl. ¶ 88.

¹⁴² Rehoboth Beach, Del., C. (Charter) §17.

As established above, Plaintiffs' requested relief threatens significant harm and prejudice to Defendants. Furthermore, Plaintiffs' alleged harm is based on a mistaken interpretation of the Charter and an arbitrary disagreement with the amount of Tedder's salary. As stated above, the proper remedy for Plaintiffs' claims is via the political process, not judicial intervention.

CONCLUSION

Plaintiffs' Complaint fails to state a claim for relief because there is no Charter violation. The Charter clearly authorizes the Board to hire a City Manager, impose the necessary qualifications for City Manager, and to determine the City Manager's salary. Furthermore, even if Plaintiffs' narrow interpretation of the Charter was correct, Plaintiffs' claims are untimely as a matter of law and under the doctrine of laches. Furthermore, Plaintiffs cannot meet the burden to prove they are entitled to equitable relief because there is no Charter violation and they have an adequate remedy in the City's political process. Accordingly, Defendants respectfully request this Court enter an Order dismissing Plaintiffs' Complaint with prejudice.

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WORD LIMIT: 14,000

WORD COUNT: 11,798

Dated: October 18, 2024



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN LINEHAN and THOMAS)
GAYNOR,)

Plaintiffs,)

v.)

C.A. No. 2024-0851-BWD

STANLEY A. MILLS, JR., individually and)
in his capacity as Mayor of the City of)
Rehoboth Beach; PATRICK GOSSETT,)
EDWARD CHRZANOWSKI, FRANCIS)
MARKERT, TIM BENNETT, TONI SHARP,)
and DONALD PRESTON, individually and in)
their capacities as Commissioners of the City)
of Rehoboth Beach Board of Commissioners;)
THE CITY OF REHOBOTH BEACH)
BOARD OF COMMISSIONERS; TAYLOUR)
TEDDER, City Manager of the City of)
Rehoboth Beach; and THE CITY OF)
REHOBOTH BEACH,)

Defendants.)

CERTIFICATE OF SERVICE

I, James H. McMackin, III, Esquire, hereby certify that on the 18th day of October, 2024, copies of the foregoing (i) **Defendants Stanley A. Mills, Jr., Individually And In His Capacity As Mayor Of The City Of Rehoboth Beach; Patrick Gossett, Edward Chrzanowski, Francis Markert, Tim Bennett, Toni Sharp, And Donald Preston, Individually And In Their Capacities As Commissioners Of The City Of Rehoboth Beach Board Of Commissioners; The City Of Rehoboth Beach Board Of Commissioners; And The City Of Rehoboth**

Beach's Opening Brief In Support Of Defendants' Motion To Dismiss, and
(ii) this **Certificate of Service**, were served upon the following counsel of record
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