



Item 10 - Staff Memo

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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
Ana Lara-Franco, Commission Analyst
DATE: September 29, 2023
RE: Discussion of Options for Setting the Mayor's Salary

At its July 18, 2023 meeting, the City Council passed a motion directing the City Administrator to bring back a proposal for a November 2024 ballot measure transferring the duties of setting the Mayor's salary from the City Council to the Public Ethics Commission (Commission or PEC). At its August retreat, PEC commissioners indicated that, rather than wait for the Administrator's proposal, they would prefer that the PEC recommend to the Administrator whether the PEC should take on this responsibility, and if so how.

This item was agendized to provide an opportunity for the public to provide comment, and for commissioners to discuss, what the Commission may wish to recommend. Based on this discussion, and any initial feedback, guidance, or request for additional information from commissioners, staff anticipates returning to the PEC this December with a proposal or proposals for the Commission's consideration.

To further this initial discussion, this memorandum provides background information on how the Mayor's salary is set; how the PEC sets salaries for other City elective offices; how other California jurisdictions set their mayors' salaries; and policy questions the PEC may wish to consider as part of this discussion.

Background - Elected Official Salary-Setting in Oakland

Under the City Charter, the PEC sets the salaries for the City Council, City Attorney, and City Auditor. Under Section 202 of the Charter, the PEC bi-annually adjusts city councilmember salaries by the increase in the consumer price index over the preceding two years, up to a total of five percent. Under Sections 401(1) and 403(1), the PEC must annually adjust the salaries for the City Attorney and City Auditor to "provide for competitive compensation and equitable alignment," taking into account the highest paid employee in each office, other department head salaries, and salaries for comparable public officials in other California cities and counties. The PEC's authority to set the salary for the City Attorney and City Auditor is recent; voters transferred this responsibility to the PEC with the passage of Measure X in 2022. The PEC set the City Attorney and City Auditor's salaries for the first time in 2023.

The only elected City official that the PEC does not set the salary for presently is the Mayor. Under Section 300 of the Oakland City Charter, the City Council sets the Mayor's salary in every odd-numbered year, which must be "not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland."

Charter Provision for Elected Official Salary-Setting

Mayor's Salary (Sec. 300). *The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein.*

Council Salaries (Sec. 202). *The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year.*

City Attorney Salary (Sec. 401(1)). *... The salary of the elected City Attorney shall be set annually by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.*

City Auditor Salary (Sec. 403(1)). *... The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.*

Pursuant to the Charter, the City Council last set the Mayor's salary on July 18, 2023. At the time, the Mayor was earning a salary of \$202,999. According to a staff report prepared by the City Manager, the average salary for the city managers of Fresno, Sacramento, Long Beach, Bakersfield, Anaheim, and Stockton was \$308,860. Therefore, the available 70% to 90% salary range was between \$216,202 and \$277,974. The City Council adopted the lower range of that scale.

At that same meeting, Councilmember Fife also moved, and the City Council approved on a 6-2 vote, a motion to have the City Administrator "return to Council in a timely manner with proposed legislation to amend the City Charter in November of 2024 to move the responsibility for setting the Mayor's salary from the City Council to the independent Public Ethics Commission, as is now the case for other elected officials, including the City Attorney, City Auditor and Councilmembers." The City Administrator is likely to bring back his recommendation to the City Council in early 2024.

How the Mayor's Salary is Set in Other California Jurisdictions

Item 10 - Staff Memo

There are two types of cities in California: general law cities, which are subject to the state's general laws, and charter cities, which are cities that have adopted a city charter (akin to the city's constitution) and have some home rule autonomy from the state's general laws with regards to matters of municipal concern, including elected officials' salaries. Oakland, like most large cities, is a charter city.

For general law cities, state law sets mayoral compensation. In cities with a population of more than 250,000 residents, city councilmembers, including a mayor who is a member of the council, may be paid up to \$1,000 per month. That amount may be adjusted by no more than "5 percent for each calendar year from the operative date of the last adjustment of the salary in effect" when the salary ordinance was adopted. (Government Code Section 36516.) \$12,000 per year is very low, and likely reflects that, in most general law cities, the office of councilmember is a part-time position.

Charter cities like Oakland, however, are not governed by the State's general laws with regards to councilmember or mayoral salary. PEC staff surveyed the ten largest California cities (all of which are charter cities) and found many different approaches to mayoral salary-setting. In Fresno, the City Council has wide discretion in setting the mayor's salary. Other cities adopt a stricter approach, where there is very little discretion in salary-setting. For example, both Los Angeles and San Diego base their mayor's salaries on a superior court judge's salary. Anaheim follows the salary rules for general law cities. Other cities provide some discretion in salary amount, while setting standards for the types of factors that should be considered in setting compensation. For example, Sacramento and San Jose use appointed bodies to set salaries, while directing those bodies to take into account compensation provided in similar-sized cities.

The power and responsibilities of the mayor should also be considered in salary setting. Cities are generally described as having one of two forms of government (or a blend of both): the City Manager form of government, sometimes called the "weak mayor" form, where the city manager is the chief executive of the city and the mayor is a member of the city council, and the Mayor-City Council form of government, sometimes called the "strong mayor" form, where the mayor is the executive of the city and not a member of council. Because mayors in strong mayor cities have more power and responsibilities than mayors in weak mayor cities, they tend to have higher compensation. In California, five cities are commonly described as being either "strong mayor" cities or having "strong mayor" attributes: Fresno, Los Angeles, Oakland, San Diego, and San Francisco.

Item 10 - Staff Memo

Comparison – Mayoral Salary-Setting in the Ten Largest California Cities

Jurisdiction	Type of Mayor	Mayoral Salary Rule
Anaheim	Weak	Follows rules for general law cities. <i>Charter Sec. 502.</i>
Bakersfield	Weak	Set at \$24,000/year. <i>Charter Sec. 20.</i>
Fresno	Strong	Salary set by City Council. <i>Charter Sec. 308.</i>
Long Beach	Weak	Set at \$67,500 + CPI (set in 1988). <i>Charter Sec. 203.</i>
Los Angeles	Strong	30% more than Councilmembers (who receive salaries equal to superior court judges). <i>Charter Sec. 218.</i>
Oakland	Strong	Council set salary to 70% to 90% of the average City Manager or CEO salary of 6 nearest-in-size cities. <i>Charter Sec. 300.</i>
Sacramento	Weak	Appointed Compensation Committee sets salaries that are “reasonable and consistent with other cities similar in size and structure.” <i>Charter Sec. 29.</i>
San Diego	Strong	Salary equal to salary of superior court judge. <i>Charter Sec. 24.1.</i>
San Francisco	Strong	Civil Service Commission sets salaries based on average of 5 Bay Area counties. Commission may reduce salaries if City and employee unions reduced their salaries. <i>Charter Sec. A8.409-1.</i>
San Jose	Weak	Appointed Salary Setting Commission sets salary taking “commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.” City Council may reduce salaries. <i>Charter Sec. 407.</i>

Questions the PEC May Wish to Discuss

In discussing how the mayor’s salary should be set, commissioners may wish to consider the following questions:

1. Who should set the Mayor’s salary?

Should the salary be set by the City Council (current law), the PEC (which sets all other City elected official salaries), or some other body (like the Civil Service Commission, as in San Francisco)?

- The City Council may provide political accountability to the voters for the process. However, it also risks politicizing the salary-setting process, where the mayor’s salary might depend significantly on whether or not his or her allies control the Council.
- A politically-insulated body, like the PEC, may lead to a fairer process where charter criteria, such as setting the salary based on compensation in peer jurisdictions, are more likely to be followed over political considerations. However, heightened scrutiny over the salary-setting process may pressure the PEC to make political decisions and subject the PEC to criticism that could undermine public trust in the PEC’s other mandates around campaign finance and government ethics compliance.

2. How much discretion should the salary-setting body have?

Item 10 - Staff Memo

Should the salary-setting body have complete discretion to set the salary on whatever factors it deems relevant? Should the body have some discretion, while having to base its decision on certain charter-defined criteria, as the PEC does for the City Attorney and City Auditor? Or should there be very little to no discretion, similar to the PEC's limited role in adjusting the councilmembers' salaries for inflation or how San Diego ties mayoral pay to superior court judge compensation, or Los Angeles to a multiple of councilmember compensation?

- More discretion may enable a salary-setting body to better take into account unique circumstances, such as fiscal crises, in deciding whether to raise salaries and by how much. However, it may make the process more susceptible to abuse or accusations of abuse, and invite the salary-setting body to subjectively evaluate how well elected officials are performing, which is a political judgment.
- Conversely, less discretion narrows the opportunity for abuse, but reduces the salary-setting body's ability to address unique circumstances. If the salary-setting body has no discretion, it may not be necessary to assign salary-setting to an independent body.

3. What factors, if any, should or must the salary-setting entity consider?

For the City Auditor and City Attorney, the PEC must provide for competitive compensation and equitable alignment and take into account:

- The salary for the highest paid professional employee in the official's office;
- The salary of other City department heads; and
- The salary for the same office in other California cities and counties.

Other considerations might include inflation, anticipated raises for represented employees, the financial condition of the City, or other factors.

The PEC may also wish to discuss, for the mayor, what might constitute a comparable office in other cities? Should the salary of weak mayor cities be considered, or only strong mayors? Should city manager pay be considered, or only elected official pay? Should jurisdictions outside of California be considered?

4. If the PEC sets the Mayor's salary, should the factors the PEC applies or considers be the same as those used for setting the salaries of the City Council, City Auditor, and/or City Attorney, or different?

Using the same or a similar standard would likely be more administratively simple for staff and promote compensation fairness across elected offices. (This may mean recommending that the salary-setting process for the City Council, City Attorney, and City Auditor be adjusted in the same measure that reassigns mayoral salary-setting to the PEC.) On the other hand, there may be differences in the nature of the different offices that should require the application or consideration of different standards.