

Item 14 - ED Salary Adjustment



Ryan Micik, Chair
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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: Process for Adjusting Executive Director Salary

Overview

Every year, coinciding with its evaluation of the performance of the Executive Director, the Commission must decide whether to authorize a performance-based salary increase and/or management leave for the Executive Director. This memorandum provides background information on this process.

Background

On November 4, 2014, Oakland voters approved ballot measure CC, which strengthened the Public Ethics Commission (PEC or Commission) by creating a new City Charter section 603 to expand the Commission's authority, structure, staffing, and independence. With the passage of measure CC, the Commission acquired the autonomous authority to evaluate the Executive Director's performance, establish salary within an existing range, and choose to terminate the Executive Director, who serves solely at the pleasure of the Commission rather than the City Administrator, as was previously the case.

The new City Charter section 603(g)(3) was drafted with the intent to provide the Public Ethics Commission with more independence from City officials by granting the Commission with the sole authority over the Executive Director's performance and employment. The purpose of this change was to ensure that the Commission's operations are separate and distinct from City officials so that the Commission and its staff can independently oversee compliance by City officials with campaign finance, ethics and transparency laws.

City Charter Section 603(g)(3), which became effective on January 1, 2015, reads as follows:

The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

Article III, Section 2 of the Commission's Operations Policies provides as follows:

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The Executive Director reports to the Chair and to the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission.

The Chair or designee must prepare a periodic, written performance review of the Executive Director subject to the review and approval by the Commission in closed session. At any time, at the request of one or more commissioners, the Chair may call and notice a closed session of the Commission to discuss the performance of the Executive Director.

In conducting the performance review of the incumbent Executive Director, Commissioners meet in a publicly noticed, closed session along with the Commission's attorney and any other invited attendee, such as the Director of the Department of Human Resources Management or a Deputy City Attorney with labor law experience. In past years, the Chair would typically consolidate Commissioner remarks at that meeting and present a written review to the Executive Director following the closed session discussion.

In addition to the performance review, the Commission has the responsibility to annually consider merit salary increases and whether to authorize additional management leave, which is available to all department heads and management-level staff. While likely informed by the closed session performance review, any decision to increase the Executive Director's salary or to award them management leave must be discussed and voted on in open session.

Annual Salary Adjustment

To provide context and background on the process and criteria for approving salary increases and management leave, the Department of Human Resources Management (DHRM) has previously provided the following information to Commissioners:

“City department heads, including the PEC Executive Director, are considered unrepresented, at-will employees who are exempt from Civil Service rules. However, for rules and procedures, the terms and conditions of the union agreement with the Confidential Management Employees Association (CMEA), are applicable to the City's unrepresented classifications. This means that, where the CMEA agreement provides rights or a description of protocol or policy, those provisions would apply to employment decisions related to the Executive Director position.”

For salary increases below the mid-point of the salary range for the position, the current CMEA agreement provides as follows:

“5.4.4. Salary Range Advancement Up To The Mid-Point

Advancement within the salary schedules specified for a represented employee's classification assigned to the salary range plan shall be on the basis on one (1) year's satisfactory service as evidenced by a Performance Appraisal. Advancement of five percent (5.0%) per year of satisfactory performance shall be made up to the mid-point of the salary range, effective at the beginning of the pay period in which the anniversary date of appointment in the classification falls. However, the appointing authority may approve an advancement at a greater percentage at a time increment of less than one year if there has been unusual

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difficulty in retaining competent employees. Subsequent increases shall resume on the incumbent's anniversary date.”

“5.4.6 Definitions

For purposes of the salary advancement provisions of Section 5.4, a represented employee shall be deemed to have performed satisfactory service if the Performance Appraisal for the period includes an overall rating of “fully effective” or “exceeds expectations.””¹

Under this policy, the Commission has the authority to increase the Executive Director's salary by generally 5% for satisfactory performance, but staying within the Council-approved salary range for each position. Salary adjustments go into effect in the pay period beginning with the Executive Director's work anniversary (May 13).

Attached is the job description for the Executive Director position, which includes the position's salary range. The annual salary range for this position is \$153,151.92 - \$229,727.04. Director Heidorn's current annual salary is \$191,213.76, which is below the mid-point in the salary range.

Authorization of Management Leave

The Department of Human Resources Management (DHRM) has previously advised the Commission that management leave for the Executive Director is governed by section 9.12 of the CMEA agreement, which is excerpted below:

9.12(a) Management Leave re

Represented employees shall be awarded five (5) days of Management Leave July 1st of each year.

Additionally, U31 employees who work irregular work hours or who demonstrate superior performance during the eligibility period of July 1 through June 30 of each fiscal year may also be awarded an additional zero (0) to five (5) days of management leave at the recommendation of the department/agency head and with final approval of Administrator.²

Under this policy, the Commission has the authority to award up to 10 days of Management Leave to the Executive Director, which will be awarded in the new fiscal year (beginning July 1, 2024).

Salary and Management Leave Questions

Commissioners should feel free to reach out directly to the Human Resources Management's Employee Relations Manager Mark Love (MLove@oaklandca.gov) or Deputy City Attorney Selia Warren (SWarren@oaklandcityattorney.org) with any questions regarding the salary-setting or management leave award process, or to verify the information in this memo.

Possible Action

¹ CMEA Agreement effective July 1, 2022 to June 30, 2025. The full CMEA Agreement can be accessed at <https://www.oaklandca.gov/documents/confidential-management-employees-association-cmea>.

² Ibid.

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Based on the Commission's performance evaluation of the Executive Director, the Commission authorizes _____ days (max: 10 days) of management leave for the Executive Director.

In addition, the Commission **authorizes/does not authorize** (select one) an annual increase of _____ percent (generally 5%) for the Executive Director.

Attachments: ED Job Description



CITY OF OAKLAND

CITY OF OAKLAND
Established Date: Jul 21, 2015
Revision Date: Aug 4, 2015

Executive Director, Public Ethics Comm

Class Code:
EM261

Bargaining Unit: UK1 - Executive Management
Employees, Unrepresented

SALARY RANGE

\$78.54 - \$117.81 Hourly
\$12,762.66 - \$19,143.92 Monthly
\$153,151.92 - \$229,727.04 Annually

DEFINITION:

Under general direction of the Public Ethics Commission (PEC), plans, organizes, and directs the activities of the PEC staff; implements PEC directives and manages the daily operations of the PEC; develops policies and procedures; supervises, trains, and evaluates staff; represents the PEC in meetings before elected officials, City staff, the public and other city and state bodies; and performs other duties as assigned.

DISTINGUISHING CHARACTERISTICS:

This executive management level position is responsible for overseeing the entire operations of the PEC. Pursuant to the Oakland Charter 902(b) and Oakland Municipal Code, this position is exempt from the regulations of the Civil Service Board. This classification is distinguished from the Enforcement Chief, Public Ethics Commission, which is responsible for overseeing major functions of the PEC's enforcement program including audits and investigations.

The incumbent receives general direction from the Public Ethics Commission, and exercises supervision over the Enforcement Chief, Public Ethics Commission, and all other subordinate staff including Ethics Investigators and Ethics Analysts and other professional, technical and clerical staff.

EXAMPLES OF DUTIES:

Duties may include, but are not limited to, the following:

- Provide highly responsible and complex executive level direction to the execution of the mission of the Public Ethics Commission.

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- Develop and implement policies, programs, and activities related to the administration and enforcement of the laws within the PEC's jurisdiction, including the following: Oakland Campaign Finance Reform Act, Limited Public Financing Act, Government Ethics Act, Sunshine Ordinance, and Lobbyist Registration Act.
- Oversee all PEC operations, including the filing of disclosure statements required by state and local laws, the preparation of advice and opinions regarding laws within the PEC's jurisdiction, investigations, audits and enforcement of those laws, and the development of educational programs and materials.
- Advise Commission members regarding laws, policies, and procedures, and review and recommend legislative changes to the laws under the PEC's jurisdiction.
- Prepare budget reports and requests, maintain fiscal controls, manage the PEC's budget and advocate for budget needs.
- Prepare or review reports to the City Administrator, City Council or other departments or commissions; work closely with Council and other public and private groups to coordinate plans or communicate about proposed projects.
- Supervise, train, develop and evaluate subordinate staff; inspire and lead staff to achieve the PEC's objectives.
- Plan and manage public hearings and represent the PEC before other local, state, and community organizations.
- Establish and maintain collaborative relationships with Commissioners, public officials, City staff, other departments and organizations, media, and the general public in the performance of assigned duties.
- Receive and direct all external communications on behalf of the PEC, including communications with the media, public officials, other government agencies, and the public.

MINIMUM QUALIFICATIONS:

The following qualifications are guidelines, as the appointing authority has broad discretion in filling positions in this classification.

Education:

A Bachelor's Degree from an accredited college or university in public or business administration, public policy, political science, law or a related field. Possession of a Juris Doctor or Master's degree is highly desirable.

Experience:

Five years (5) of progressively responsible professional experience in public administration, public policy, complaint investigation, litigation, legal advisory support or related area including two years in a supervisory or management capacity. Experience with campaign finance, lobbyist, transparency or ethics laws and regulations is highly desirable.

KNOWLEDGE AND ABILITIES:

Knowledge of:

- Laws, ordinances, and acts pertaining to the conduct of public servants, candidates, lobbyists, and other PEC clients; California Political Reform Act; Oakland Campaign Reform Act; Oakland Sunshine Ordinance; Oakland Government Ethics Act; related federal, state, and local codes; and the City Charter.

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- Principles, practices and techniques of conducting an investigation, including performing interviews, research and data analysis, report writing, and developing objective recommendations.
- Public and community relations and the development and implementation of education, outreach, and engagement programs.
- Strategic planning to achieve organizational goals and objectives.
- Budget development and administration.
- Administrative principles and methods including program and policy development and implementation and employee supervision.
- Best practices, policies, legislation, and innovations in campaign finance, government ethics or transparency laws and systems.
- Computer systems and applications.

Ability to:

- Conduct strategic planning and goal setting, prioritize activities, innovate systems, manage change and measure results of an organization.
- Interpret rules, laws and regulations and terminology pertaining to campaign finance, transparency, and ethics laws.
- Communicate effectively orally and in writing; make presentations to both large and small groups; prepare thorough written documents.
- Exercise judgment, initiative, thoroughness, tact, courtesy and discretion in dealing with other departments, City officials, outside agencies and the public.
- Serve with integrity, avoiding the appearance of bias or favoritism toward any party; clearly identify actual or potential conflicts of interest that might affect the fair performance of one's duties.
- Inspire, supervise, train, develop and evaluate assigned professional, technical and clerical staff.
- Administer the budget.
- Use a personal computer and software applications.
- Establish and maintain effective work relationships with those contacted in the performance of required duties.

LICENSE OR CERTIFICATE / OTHER REQUIREMENTS:

Individuals who are appointed to this position will be required to maintain a valid California Driver's License throughout the tenure of employment OR demonstrate the ability to travel to various locations in a timely manner as required in the performance of duties.

OTHER REQUIREMENTS

None required.

CLASS HISTORY:

Revised: 06/16/2022; CSB Reso#: 45135

Established: 07/16/2015; CSB Reso#: 44772

Exemption: 902(b); Reso#: 13321