

### **Comment on Item 13**

This comment addresses only recommendation two: salary setting. While I do not entirely disagree with granting the Commission the ability to waive or reduce a salary increase in times of budget necessity, the Commission should be restricted in how it can exercise this discretion.

It is unclear precisely how frequently the Commission would have had discretion to waive or reduce salary increases if this provision was already law, but it seems likely that this provision would have been triggered frequently. As written, the provision includes two triggers: (1) when the City is facing extreme fiscal necessity, fiscal crisis, or fiscal emergency; and (2) when the General Purpose Fund (GPF) revenue is projected to decrease. The City Council only adopted the definitions used in (1) last year, so there is no historical context for that trigger.<sup>1</sup> The second trigger has more historical context. While historical projections of GPF revenue is not easily accessible, actual historical GPF revenue is for FY05 onward: the fund's revenue decreased between FY05 and FY06; FY06 and FY07; FY08 and FY09; FY09 and FY 10; FY15 and FY16; and FY18 and FY19.<sup>2</sup> As of the most recent budget cycle, GPF revenue was also projected to decrease from FY22 to FY23.<sup>3</sup> Accordingly, assuming that in each fiscal year that the GPF revenue actually decreased it was also projected to decrease, this trigger would have been met in at least seven of the past twenty fiscal years.

The high likelihood of the Commission having discretion to waive or reduce a salary increase raises concerns about whether the Commission will have too much discretion under this provision. If the Commission too often decides to utilize its discretion, public officials may be undercompensated. Undercompensation raises various concerns: it may prevent those without financial resources from running for office, result in less talented candidates running for office, and increase the risk of corruption because of officials seeking to supplement their salary.<sup>4</sup> Even as increased salaries may not increase economic diversity of public officials, empirical studies suggest that politicians with higher salaries are less likely to pursue outside employment while in office; introduce more legislation and miss fewer votes; more closely track their constituents' ideologies; are more likely to run for reelection; favor citizen interests over business interests; and face more electoral competition.<sup>5</sup>

To prevent the Commission from waiving or reducing necessary salary increases, this provision should have limits on the Commission's discretion. First, the provision should explicitly prohibit the Commission from considering the public official's performance when deciding whether to waive or reduce a salary increase. Whether a salary increase is "deserved" should be irrelevant; instead, all that should matter is budgetary necessities. Second, the scope of the Commission's discretion should be tied to some objective metric of budget necessity. For instance, the provision could set a floor for the salary increase of the annual wage increase for represented employees. This (or a similar restriction) would ensure that the salary increases are only waived or reduced in parity with other employees and to the extent it is truly necessary.

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<sup>1</sup> Ord. No. 89803 C.M.S. (adopted June 22, 2023).

<sup>2</sup> FY23-25 Adopted GPF – Revenue,

<https://oaklandca.opengov.com/data/#/72813/query=00C870F218CD272EF167E67587CE6723&embed=n>.

<sup>3</sup> *Id.*

<sup>4</sup> Kellen Zale, *Compensating City Councils*, 70 Stan. L. Rev. 839, 883–91 (2018).

<sup>5</sup> Nicholas Carnes and Eric R. Hansen, *Does Paying Politicians More Promote Economic Diversity in Legislatures?* 110 Am. Pol. Sci. Rev. 699, 699–700 (2016) (summarizing the results of various studies).