

CITY COUNCIL

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☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 16

Date: December 14, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney
Jennifer K. McCain, Assistant City Attorney

SUBJECT: City Council Compensation and Benefits

RECOMMENDATION:

Consideration of adjustment to City Council Compensation as required by City Council Rules and Procedures, Section (B)(9).

FISCAL ANALYSIS:

Adoption of a salary adjustment would result in an annual increase to the General Fund budget commensurate with any salary adjustment

DISCUSSION

Mayor and Council Salaries

Since the City of Escondido is currently a general law City, salaries for the Mayor and City Councilmembers are controlled by California Government Code §§ 36516 and 36516.5.¹ Government Code § 36516(a) permits a city council to establish by ordinance a salary up to a ceiling based on the City's population. The electorate may approve a higher salary. See Government Code § 36516(b). Under Section 36516(a)(4), salary increases must be adopted by ordinance and cannot exceed 5% for each calendar year calculated from the operative date of the last increase. Amounts paid by the City for retirement, health and welfare², and federal social security benefits shall not be included for the purposes of determining salary under Section 36516 provided the same benefits are available and paid by the City for its employees. See Government Code § 36516(d).

¹ A charter city is not necessarily bound by state law with regard to salaries for Councilmembers and Mayors. However, the Council's current direction regarding the City Charter proposal is to include language in the City Charter that requires compliance with state law. This provision was specifically included to avoid any appearance of impropriety as raised by events in the City of Bell.

² Pursuant to Government Code § 53200, "health and welfare benefit" means any one or more of the following: hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance. Section 53208.5(b) limits health and welfare benefits of any member of a legislative body to an amount "no greater than that received by nonsafety employees of that public agency." In the case of agencies with different benefit structures, "the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees."

Future, automatic increases in City Council salaries are not permitted. A change in compensation does not apply to a councilmember during the councilmember's term of office. Government Code § 36516.5. Id. A salary increase regardless of when adopted, cannot take effect until one or more members commences a new term of office. The salary of a councilmember may not be reduced during his or her term of office. Government Code § 36516.5; 80 Ops Cal Atty Gen 119 (1997). Thus, any action taken by the City Council at this time would not be effective until December, 2012.

Pursuant to City Council Policy, Section (B)(9) "the City Council shall have an agenda item during a meeting in December of odd numbered years for the purpose of determining whether or not to take action regarding Council compensation."

The last ordinance adopted by the City Council pertaining to salaries was in 2007 (Ordinance 2007-14) which amended EMC § 2-28 and increased the compensation of City Councilmembers to \$1,255.25 per month. The salary adjustment was effective for Councilmembers following the November 2008 municipal election. Pursuant to EMC § 2-28(b), the Mayor's salary pursuant to Government Code § 36516.1 increases by the same percentage set forth in any ordinance adopted which provides for City Council salaries, and is currently set at \$2,288.00 per month.

The City Council has not taken a raise since 2008. In fact, on January 7, 2009, the City Council took action to voluntarily return 5% of their salary to the City for a one year period. On January 4, 2011, the City Clerk advised the Mayor and Council that effective with the first payday in January of 2011, the voluntary reduction would expire and the Council salaries would be restored to their original amounts. Any member desiring to continue the voluntary reduction in pay was advised to contact payroll.

Community Development Commission Salary

The City of Escondido also has a redevelopment agency, which was created by ordinance in 1984. The redevelopment agency is governed by a Community Development Commission (CDC) authorized by Health & Safety Code § 34110. Section 34120(a) permits the legislative body to appoint itself as the Commission, which was accomplished in Escondido by means of Ordinance 85-2. Health & Safety Code § 34130.5 provides that the City Council shall set the compensation for members of the CDC. Ordinance 85-51, adopted by the City Council in August 1985, set the salary for service on the CDC at 50% of the salary established for the City Council, payable at the same time and in the same manner as Council salaries.³

Effective January 1, 2006, Assembly Bill 11 limited the compensation which a City Council can pay to its CDC. Under AB 11, the amount of salary payable for service on the CDC, including duties as a Housing Authority, is now statutorily capped at \$300 per month. Escondido Councilmembers

³ Since the redevelopment agency is created by statute, it is unlikely that the City has the authority to alter the compensation of members of the CDC even under a charter city form of government.

previously received \$438 in salary for duties as Commission members. Based on an opinion from the California Public Employees Retirement System (CalPERS), the CDC salary is reportable to CalPERS for the purposes of calculating the pension benefits for Councilmembers, however, the City does not currently do so.

During the 2011 legislative session, the California Legislature adopted legislation providing for the elimination of redevelopment agencies (AB 26X) with an alternative to cities to continue having an agency subject to additional payments to the state (AB 27X). This legislation was challenged (insert full case name of Monsanto case) and is pending before the California Supreme Court. A decision is expected by January 15, 2012. Because Escondido has already indicated that continuation of redevelopment, even under the new legislation, is still in the best interest of the community, it is unlikely that either this legislation or the court case will have an impact on local salaries.

Councilmember Benefits

As with compensation, the benefits afforded the Mayor and Councilmembers are also limited by state law. Government Code § 36516(d) provides that "any amounts paid by a city for retirement, health and welfare, and federal social security shall not be included for purposes of determining [council] salary. . . *provided that the same benefits are available and paid by the city for its employees (emphasis added).*" Government Code § 53208.5(b) limits health and welfare benefits of any member of a legislative body to an amount "no greater than that received by nonsafety employees of that public agency." In the case of agencies with different benefit structures, "the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees." In addition, with the adoption of AB 1234, elected officials are entitled to reimbursement for their actual and necessary expenses in the performance of their official duties pursuant to state law. See Government Code § 36514.5. City Council Policy, Section (B)(8) incorporated these laws and requires Councilmembers be bound by the same policies and procedures for reimbursement of expenses applicable to City employees generally. In the past, the retirement, health and welfare benefits and auto allowances have been set in accord with these limitations.

With regard to benefits, the Council needs to consider two benefits: (1) payment of the CalPERS member contributions and (2) the annual \$300 payment for physical exams. With regard to payment of the CalPERS member contributions, the City Council must decide if it wishes to participate with existing employee groups insofar as employees are now picking up the full percentage of their own CalPERS member contribution with a salary adjustment to offset this employee obligation. To date, the unclassified clerical, technical, and management employees are paying their own full CalPERS member contributions and have received a 4% offsetting increase in salary. The City Manager and City Attorney have voluntarily elected to do the same. In 2010 a similar transition occurred with the Escondido Firefighters Association. Negotiations are currently underway with the Escondido Police Officers Association.

On August 10, 2011, the City Council voted unanimously to reduce the City's contribution to the CalPERS member contributions for elected officials to 4% and to defer the other part of the equation (the offsetting salary increase) to December 2011, along with the decision to adjust Council salary.


The annual \$300 for physical exams has become both out-dated and unique to the City Council. It was originally made available each year to offset out-of-pocket premium expenses. Previously, this benefit was made available to City Council, the City Manager and the City Attorney. The two employees have since voluntarily relinquished this benefit, and therefore, it is not offered to other City employees.

While any City Council action to adjust Council compensation is to take place in December of 2011 pursuant to Council Policy, an ordinance providing for a salary adjustment for Councilmembers must be adopted by the City Council and cannot take effect until December 2012.


Since the City Council last increased its compensation effective after the election in November 2008, pursuant to Government Code Section 36516(c) any salary increases must be adopted by ordinance, and cannot exceed 5% for each calendar year calculated from the operative date of the last increase. Thus, the City Council has the option of increasing the salary from 0% to 15% (5% for each calendar year 2009, 2010, and 2011). Amounts paid by the city for retirement, health and welfare are not included in these computations, provided the same benefits are available and paid by the city for its employees.

If the City Council chooses to only take an increase to offset the payment to CalPERS (similar to city employees) and to offset the loss of the annual physical benefit, the increase percentage would be approximately 6%. Staff would prepare the actual, final numbers in any ordinance adopted to implement City Council direction.

Respectfully submitted,



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