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**REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT
AND INTERGOVERNMENTAL RELATIONS**

METHODS TO SET SALARIES FOR THE MAYOR AND COUNCILMEMBERS

INTRODUCTION

The City Council has addressed a number of proposed changes to the current City Charter process for setting the salaries of elected officials since issuance of the Final Report of the 2007 San Diego Charter Review Committee [CRC Report] on October 7, 2007. The City Attorney has provided reports to the Rules Committee and to the City Council reviewing the law and analyzing several proposed changes. City Att’y Report Nos. RC 2007-17 (Nov. 2, 2007) [Separate Vote Rule]; RC 2008-1 (Jan. 14, 2008) [CRC Report re Charter Amendments]; RC-2008-3 (Jan. 29, 2008) [Supplemental Report re CRC Report Measures]; and RC 2008-6 (Feb. 22, 2008) [Additional Salary Setting Options].

The Council decided to present three measures unrelated to salary setting issues to the voters in the June 3, 2008 primary election. On February 25, 2008, the Council deferred to the Rules Committee further discussion and consideration on four proposed measures amending the City Charter to change the way the salaries of the City Council and the Mayor are currently established that might be presented to voters in the November 4, 2008 election. These measures are scheduled for consideration by the Rules Committee on May 28, 2008. This report briefly reviews the four measures to assist the Committee in its discussion.

DISCUSSION

I. The Current Process for Setting Salaries.

The City’s seven-member Salary Setting Commission is appointed by the Civil Service Commission to recommend to the City Council the enactment of an ordinance establishing the salaries of the Mayor and City Council. Charter § 41.11 (Salary Setting Commission). The process occurs at two year intervals. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor’s Salary). The Council may set the salaries lower, but may not set them higher than the Commission’s recommendation. *Ibid.* The requirement the Council act by ordinance necessarily requires the Council to vote on its own salary. The ordinance setting Council and Mayoral salaries is expressly made subject to referendum. Charter §§ 12.1, 24.1.

As a member of the City Council under the City's former government structure, the Mayor would have voted to approve his salary. Under the trial Mayor-Council form of government, the Mayor does not vote to establish his salary, because he is not a member of the City Council. However, the salaries of the Mayor and Council are part of the City Budget and Salary Ordinance over which the Mayor has special veto powers. Charter § 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power).¹

II. The CRC Report Recommendation.

In order to avoid the requirement that Councilmembers vote on their own salaries, the CRC Report recommended the Salary Setting Commission be reconstituted and given broader powers to actually *set* the salaries every two years for all elected officials, including the Mayor, City Councilmembers, and the City Attorney. CRC Report pp. 9, 21-22 and 70-73 (Excerpts attached as Exhibit A.). The reconstituted Salary Setting Commission is patterned after the California Citizens Compensation Commission, established by the California Constitution to set the salaries of state officers. Cal. Const. art. III. § 8. (Text attached as Exhibit B.) The CRC Report recommended changes requiring the Council to adopt an ordinance that incorporates the salaries set by the Commission, with such ordinance subject to referendum and exempt from any Mayoral veto for the duration of the Mayor-Council form of government. The City Attorney recommended minor changes to the language of the measure proposed in the CRC Report. City Att'y Report No. RC 2008-1 (Jan.14, 2008) at pp. 12-13.

III. Council Action on January 14, 2008.

On January 14, 2008, the Council directed this Office to prepare a modified version of that recommended by the CRC Report to set salaries for all elected officials, deleting the requirement the Council adopt an ordinance, yet retaining the right of referendum.² This Office drafted a measure (O-2008-94) for Council to review at its February 4, 2008 meeting, incorporating and explaining our various changes. City Att'y Report No. RC-2008-3 (Jan. 29, 2008) at p. 9. However, this Office retained the requirement the Council adopt this mandatory ordinance in order to preserve the referendum right, noting that the City Charter reserves the referendum process only to "any ordinance passed by the Council." San Diego Charter § 23.³

IV. Council Action on February 4, 2008.

¹ The salary of the City Attorney is set by the City Council and may not be decreased during the term of office. Charter § 40 (City Attorney).

² The suggestions for the measures were based on a January 11, 2008 memorandum from Council President Scott Peters, Council President Pro Tem Jim Madaffer, and Councilmember Kevin Faulconer.

³ Section 5.1 of the City Charter establishes a detailed procedure used by the City's Redistricting Commission that subjects its final redistricting plan to referendum without adoption of an ordinance. This procedure has not been evaluated to determine if it could be a successful model for a salary setting process.

At its February 4, 2008 meeting, the Council directed this Office to work with the Independent Budget Analyst [IBA] to provide the Council with additional options for setting salaries that might link the Mayor's and Councilmembers' salaries to some automatic external guide and excluding changes to the process setting the City Attorney's salary. Suggestions included linking salaries to judicial salaries, or setting initial salary increases and linking future increases to the Consumer Price Index [CPI].

Our February 22, 2008 Report to Council compared the salary setting process used by three other charter-regulated bodies: the San Diego County Board of Supervisors (salaries set by their ordinance); the City Council of Los Angeles (city charter ties salaries of Mayor and Council to judicial salaries); and Anaheim (charter incorporates the state law regulating salaries in general law cities). We provided the Council with two additional draft measures for consideration that: (1) would link Mayoral and Councilmember salaries to a undefined percentage of state judicial salaries as set and adjusted by state law (O-2008-116); and (2) would establish salaries for two years, adjusting them upward after that according to the San Diego Consumer Price Index for Urban Consumers [CPI-U] (O-2008-117).

On February 22, 2008 our office received a request from Councilmembers Madaffer and Young to draft a measure to be effective July 1, 2009, setting the Mayor's salary at 100% and the Council's salary at 75% of the salaries established and adjusted for state superior court judges. We provided the Council with such a measure (O-2008-120) for the February 25, 2008 meeting. Effective July 1, 2007, the salary of a judge of the Superior Court for the State of California is \$171,648.00.

The three newer measures provided two additional options for Council consideration. One option would cap any annual adjustment increase to Mayor or Council salaries at no more than five percent (5%) of their existing salaries, even if the state law increases for judges or the CPI-U increases exceeded 5%. This option was patterned on the state law limiting the salaries of Councilmembers in general law cities that has been adopted by the City of Anaheim. A second option created an "escape clause," allowing the Council flexibility in the event of a City fiscal emergency by permitting it to suspend operation of the charter sections for one fiscal year. For example, similar language appears in San Diego Municipal Code sections 22.0228(e) (relating to the budget and library appropriations) and 22.0229(e) (relating to the budget and regional park improvements).

V. The 2008 Salary Setting Commission's Recommendation.

In its report issued February 15, 2008, the San Diego Salary Setting Commission recommended increases to the existing salaries of the Mayor and City Councilmembers as follows: effective July 1, 2008, Councilmembers' and the Mayor's salaries would increase respectively to \$100,000 and \$130,000; and effective July 1, 2009, Councilmembers' and the Mayor's salaries would increase respectively to \$125,000 and \$150,000.⁴

VI. Council Action February 25, 2008.

All four draft measures were before the Council at its February 25, 2008 meeting. The Council elected to take no action on the matters, referring all of them to the Rules Committee for further discussion. The discussion of these matters is scheduled to occur May 28, 2008.

CONCLUSION

This Office is ready to provide assistance to the Committee at the hearing May 28, 2008 and thereafter.

Respectfully submitted,

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⁴ On April 14, 2008, the City Council voted to set the salaries as follows: effective July 1, 2008 the Mayor's and Councilmembers' annual salaries would be set respectively at \$100,464 and \$75,386; and effective Jan. 1, 2009 at \$130,000 and \$93,485, respectively. The Mayor vetoed that action and the Council declined to override the veto. The Council formally rejected the recommendations of the Salary Setting Commission on April 21, 2008, retaining existing salaries for the Mayor and Council.