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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ADDITIONAL MAYOR AND COUNCILMEMBER SALARY-SETTING AND
ADJUSTMENT OPTIONS

INTRODUCTION

On January 14, 2008, the Council directed preparation of a ballot measure providing that future salaries of all elected officials be set by a reconstituted Salary Setting Commission to whom the Council would delegate its discretion to set those salaries. The Council suggested deleting the requirement it adopt an ordinance, yet still subject the salary decision to the referendum process. This Office prepared the measure (O-2008-94) with some modifications. In order to meet referendum requirements, the measure also retains the requirement that the Council adopt an ordinance establishing the salaries set by the Commission with no discretion to modify the salaries the commission established,. *See* City Att’y Report RC-2008-3 (Jan. 29, 2008).

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 measures that would link the Mayor and Councilmembers’ salaries to some external guide that would set and/or adjust salaries. One suggestion was to link Councilmembers’ salaries to judicial salaries. Another was to automatically link future increases to the Consumer Price Index [CPI].¹

This report reviews existing City Charter provisions and processes used by other charter-regulated legislative bodies. As directed, this Office submits two additional measures for the Council’s consideration that automatically set and adjust the salaries of the Mayor and City Councilmembers by charter and/or by link to an external reference. One measure (O-2008-116) links the salaries and annual adjustment to the salaries of Superior Court judges as set and adjusted by state law. The other (O-2008-117) would establish salaries by charter for two years,

¹ City Charter section 11.1 prohibits the City Council from adopting any scheme or formula “which seeks to fix the compensation of City of San Diego employees at the level of compensation paid to employees of any other public agency. . . not accountable to the People of the City . . . or any scheme or formula which seeks to fix, establish or adjust the compensation of . . . employees at the level of the largest cities in California or the state of California.” This section appears inapplicable to the City Council and the Mayor because they are elected officials, not “employees” of the City of San Diego.

and thereafter adjust them upward according to the San Diego Consumer Price Index for Urban Consumers [CPI-U].

These proposals leave to the Council a number of decisions for the final language that would be submitted to the voters. Those decisions and choices are summarized in the Conclusion.

DISCUSSION

I. Existing Charter Provisions.

The City Charter currently permits the salaries for Councilmembers and Mayor to be adjusted every two years by Council ordinance, after considering the salary recommendations made by a seven-member Salary Setting Commission, appointed by the Civil Service Commission. The Council has the discretion to set the salaries below the recommended amount. The ordinance setting Council salaries is expressly made subject to referendum. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary), and 41.1 (Salary Setting Commission).

II. Salary-Setting Processes Used by Other Charter-Regulated Legislative Bodies.

Other charter-regulated bodies establish their salaries in different ways. We review several of them for Council consideration and as background for some of the changes submitted in the two measures.

A. San Diego County.

Similar to the City Charter, but without the limitation of a Commission recommendation, the San Diego County Charter requires the salaries of its legislative officers, the Board of Supervisors, to be "established by ordinance of the Board." San Diego County Charter § 402. In 1977, the Supervisors enacted an ordinance linking their salaries to a percentage of the salaries paid and adjusted by state law for judges of the San Diego Municipal Court. Until 1981, the percentage was 76% of those salaries. In 1981 and thereafter, it was to increase to 80% of those salaries. *See* San Diego County Ordinance No. 4933 (June 14, 1977). In 1998, the County ordinance was amended to link Supervisor salaries to 80% of the salaries of Superior Court judges (Ordinance No. 8970).

1. Judicial Salary Setting.

The salaries of Superior Court judges in the state of California are set by the Legislature and may not be reduced during a term of office. Cal. Const. art. 3 § 4(b).² California Government

² Article 3, section 4 (b) of the California constitution provides: "(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge

Code section 68202 sets the salaries of Superior Court judges and section 68203³ sets how salary increases occur. Yearly increases in judicial salaries are linked to the average percentage salary or dollar limitation increases given State employees. Cal. Gov't. Code § 68203 (a). The Legislature may also provide judges with additional separate increases in salaries as it did with eight and a half percent (8.5%) increases in 2001 and 2007. Cal. Gov't. Code § 68203(d) and (e).

B. City of Los Angeles.

In Los Angeles, another charter city, the salaries of the Mayor, Council members and other elected officials are established by Charter and linked to judicial salaries. Los Angeles City Charter § 218(a).⁴ Councilmember salaries are set as those of Municipal Court judges or a successor court. The Mayor is paid 30% more than a Councilmember. The Controller is responsible for ascertaining the judicial salaries and for setting and adjusting the salaries of the elected officials.

been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.”

³ California Government code section 68203 provides: “(a) On July 1, 1980, and on July 1 of each year thereafter, the salary of each justice and judge named in Sections 68200 to 68202, inclusive, and 68203.1 shall be increased by the amount that is produced by multiplying the then current salary of each justice or judge by the average percentage salary increase for the current fiscal year for California State employees; provided, that in any fiscal year in which the Legislature places a dollar limitation on salary increases for state employees the same limitation shall apply to judges in the same manner applicable to state employees in comparable wage categories. ¶ (b) For the purposes of this section, salary increases for state employees shall be those increases as reported by the Department of Personnel Administration. ¶ (c) The salary increase for judges and justices made on July 1, 1980, for the 1980-81 fiscal year, shall in no case exceed 5 percent. ¶ (d) On January 1, 2001, the salary of the justices and judges named in Sections 68200 to 68202, inclusive, shall be increased by the amount that is produced by multiplying the salary of each justice and judge as of December 31, 2000, by 8 1/2 percent. ¶ (e) On January 1, 2007, the salary of the justices and judges identified in Sections 68200 to 68202, inclusive, and 68203.1 shall also be increased by the amount that is produced by multiplying the salary of each justice and judge as of December 31, 2006, by 8.5 percent.”

⁴ Los Angeles Charter section 218 provides in pertinent part: “(a) . . . ¶(1) *Salaries.* Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted. ¶ . . . The Mayor shall be paid a salary that is 30% more than that of a Council member. ¶ The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise ¶ (3) *Operative Date of Changes in Salaries.* The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges.”

C. City of Anaheim.

Anaheim is a charter city that sets the compensation of its elected officials by adopting the method used by general law cities as established by state law. Anaheim City Charter § 503.⁵

1. Salary Setting for General Law Cities.

California Government Code § 36516⁶ and related sections govern how Council salaries are set in general law cities. The statute sets a schedule of salaries depending on city population, with the maximum salary at \$1000 per month for officials from cities exceeding 250,000 in population. Cal. Gov't. Code § 36516(a). Salaries may be set above or below the schedule if the voters approve the change, but salaries may not exceed 5% more than the last adjustment. Cal. Gov't. Code § 36516(b) and (c). State law prohibits enacting any ordinance that would provide "for automatic future increases in salary." Cal. Gov't. Code § 36516 (c).

III. Two Measures for Consideration.

This Office has prepared two additional ordinances proposing measures to change the City Charter that would either: (1) link the Mayor's and Councilmembers' salaries to a percentage of the salaries of judges of the Superior Court (O-2008-116); or (2) set fixed increases in the salaries of Councilmembers for two consecutive years, thereafter linking future annual salary increases to upward movement in the CPI-U for San Diego (O-2008-117).

⁵ Section 503 provides in pertinent part: "The members of the City Council, including the Mayor, shall receive as compensation for their services as such a monthly salary in such amount as established in accordance with, and limited by, the provisions of law applicable to the salaries of City Council members in general law cities as set forth in Section 36516 of the Government Code of the State of California or any successor provision thereto. . . ."

⁶ California Government Code section 36515 provides in pertinent part: " (a) A city council may enact an ordinance providing that each member of the city council shall receive a salary, the amount of which shall be determined by the following schedule: ¶ . . . (6) In cities over 250,000 population, up to and including one thousand dollars (\$1,000) per month. . . . ¶ (b) At any municipal election, the question of whether city council members shall receive compensation for services, and the amount of compensation, may be submitted to the electors. If a majority of the electors voting at the election favor it, all of the council members shall receive the compensation specified in the election call. Compensation of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner. ¶ (c) Compensation of council members may be increased beyond the amount provided in this section by an ordinance or by an amendment to an ordinance but the amount of the increase may not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. No salary ordinance shall be enacted or amended which provides for automatic future increases in salary. . . ."

Both measures would amend sections 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary) and 290(b) (Council Consideration of Salary Ordinance and Budget; Special Veto Power), and repeal section 41.1 (Salary Setting Commission). We describe later how the measures differ. The identical aspects of both measures accomplish the following:

- Change the title of section 12.1 to Councilmember Salaries.
- Repeal section 41.1 establishing the Salary Setting Commission.
- Amend section 290(b) to require the budget to include the salaries established by section 12.1 and 24.1. Prohibit the Council from modifying those salaries, and, consequentially, the Mayor from vetoing them.
- Set the annual salary of the Mayor as thirty-three and one third percent (33.3%) (or such other percentage the Council sets) more than that of a Councilmember as set and adjusted by section 12.1. The Mayor presently makes \$100,464, or 33.3% more than a City Councilmember (\$75,386).

Both measures also provide two options for Council consideration. One 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 exceed 5%. This is patterned on the state law limiting the salaries of Council members in general law cities that has been adopted by the City of Anaheim. A second option creates an "escape clause," allowing the Council some flexibility by permitting it to suspend operation of the sections in the event of a fiscal emergency 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]. The Council may accept either, neither, or both of these options.

A. Linking Council and Mayoral Salaries to the Salaries of Judges of the Superior Court (O-2008-116).

This measure links Councilmember salaries to a percentage of the salary of a California Superior Court judge. Future upward increases in salary would be linked automatically to state law adjustments to judges' salaries, unless the Council elects either or both options described above. This measure would accomplish the following:

- Effective July 1, 2008, link the annual amount and adjustments of the salary of Councilmembers to a given percentage (to be set by the Council) of the salaries of judges of the Superior Court of the State of California as established by state law, similar to the procedure in Los Angeles. Using current salaries as a reference point,

City Councilmembers earn about 44% (\$75,386) of the current salary of Superior Court judges (\$171,648).

- Require the Auditor and Comptroller to ascertain the judicial salary and adjustments to that salary set by state law, and calculate the salaries of the Council. Require the City Manager to incorporate those salary amounts into the City's budget, subject to balanced budget requirements.

B. Setting Salaries by Charter and Adjusting According to the CPI-U for San Diego (O-2008-117).

This measure establishes Councilmember salaries by Charter for two years, with future increases linked to the annual CPI-U for San Diego. We leave for the Council the decision how much of a salary increase should be included for each year. We set two consecutive years for the fixed increases before salaries are annually, and automatically, adjusted upward with increases in the CPI-U. The two-year period is subject to Council revision. An uncontrolled upward adjustment might not occur if the Council elects to include a cap on the annual increase, or the escape clause option in the measure.

This measure would accomplish the following:

- Effective July 1, 2008, and July 1, 2009, set fixed increases in the annual salaries of Councilmembers (to be set by the Council). Effective July 1, 2010 (subject to Council approval) and each July 1 thereafter, adjust those salaries upward to reflect any upward change in the Urban Consumer Price Index for San Diego[CPI-U] for the preceding calendar year ending December 31.
- Require the Auditor and Comptroller to set and adjust the salaries of the Council and Mayor annually. Require the City Manager to incorporate those salary amounts into the City's budget, subject to balanced budget requirements

CONCLUSION

Councilmembers indicated their wish that voters have a voice in these matters. Existing Charter provisions permit the voters to use the referendum process each time the Council adopts an ordinance setting the Mayor's and the Council's salary. The measure proposed earlier (O-2008-94) continued voter access by referendum by requiring the Council to adopt an ordinance including the salaries set by the reconstituted Salary Setting Commission, without the discretion to modify those salaries. The two measures accompanying this report will require voter approval for the initial charter amendments. However, if adopted, the changes would not permit voter review of annual salary increases by referendum. Future voters may use the initiative process to repeal or amend these Charter provisions.

In the event the Council chooses to submit either of these measures to the voters, the Council must also decide the following:

For the salary-setting measure based on a percentage of judicial salaries (O-2008-116):

- Determine the percentage of the salary of a Superior Court judge that will be used to set Councilmembers', and, consequentially, the Mayor's salaries.

For the measure setting increased salaries, and adjusting according to the CPI-U (O-2008-117):

- Establish the annual salary for Councilmembers to be effective July 1, 2008 and July 1, 2009.
- Approve, or modify, two years as the number of years the Charter will establish the salaries for Councilmembers.

For either measure:

- Decide if the Mayor's salary should be thirty-three and one-third percent (33.3%) more than that of Councilmember's salaries, or to increase or decrease that percentage.
- Decide whether to include either, both, or neither optional clauses that would cap annual increases at no more than five percent (5%) over existing wages, regardless of state actions affecting judicial salaries, or larger increases in the CPI-U, and/or provide an escape clause in the event of a fiscal emergency.

This Office awaits direction from the Council and will be available at the hearing to answer questions.

Respectfully submitted,

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