

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

MEMORANDUM OF LAW

DATE: April 16, 2007

TO: Honorable Mayor and City Council members

FROM: City Attorney

SUBJECT: Request to Continue Impasse Hearing and Introduction of Salary Ordinance

INTRODUCTION

The San Diego City Fire Fighters' union, Local 145, has requested a one-week continuance of the impasse hearing scheduled on the City Council agenda for April 16, 2007.¹ Local 145 states as reasons for the request that an alternative location for the impasse hearing is necessary to accommodate an anticipated large turnout and because there may not be a full council at the meeting on April 16, 2007.² This Office has been asked to provide an analysis of whether the City Council may grant Local 145's request for a continuance of the impasse hearing and delay the introduction of the salary ordinance to allow for a full council and to accommodate the anticipated turnout for the hearing.

QUESTION PRESENTED

May the City Council grant Local 145's request for a one-week continuance of the impasse hearing and delay the introduction of the salary ordinance?

SHORT ANSWER

No. Charter section 290 provides that the salary ordinance shall be introduced by the City Council no later than April 15 of each year. The salary ordinance fixes the salaries of all officers and employees. In order to fix the salaries, negotiations with recognized labor unions must be completed so that the salaries have been set by either a memorandum of understanding or by imposition of the City's last, best, and final offer. The April 15 deadline is part of a process to

¹See, Letter dated April 12, 2007, from Ron Saathoff to Council President Peters, a copy of which is attached.

² It is anticipated that Council members Kevin Faulconer and Jim Madaffer will be absent from this hearing.

ensure the timely adoption of the City's budget and annual appropriation ordinance. Accordingly, the City Council may grant a continuance that might affect these deadlines only if legally required to do so or for other compelling reasons. Local 145's reasons do not appear to meet this requirement.

ANALYSIS

City Charter section 290 provides that the salary ordinance shall be introduced by the City Council no later than April 15 of each year.³ The salary ordinance fixes the salaries of all officers and employees of the City and is proposed by the Mayor in a "form consistent with any existing Memorandum of Understandings with recognized labor organizations, or otherwise in conformance with procedures governed by the Meyers-Milias-Brown Act or any other legal requirements governing labor relations that are binding upon the City." Charter § 290(a).

After the salary ordinance is introduced, it is transmitted to the Mayor, who shall, within five business days of receipt, either approve the ordinance as introduced by Council or veto all or any specific provision within the ordinance. Charter § 290(a)(1). The salary ordinance is then returned to the Council, which has ten business days to override the veto and pass the salary ordinance as introduced or otherwise accept the changes proposed by the Mayor at the second reading of the ordinance. Charter § 290(a)(2). The salary ordinance passed by the Council becomes a controlling document for preparation of the annual appropriation ordinance for the ensuing fiscal year. Charter § 290(a)(3).

As noted above, the Council must introduce the salary ordinance "fixing the salaries of all officers and employees of the City." In order to meet the April 15 deadline contemplated in the Charter, the City must use its best efforts to complete negotiations with the recognized labor organizations and enter into a memorandum of understanding with respect to salaries by April 15 each year. If an agreement is not reached, the City should continue to negotiate in good faith until at impasse and the City has imposed its last, best, and final offer in accordance with applicable labor relations legal requirements.

The City's labor negotiators have met with Local 145 on 16 occasions since February 9, 2007. On April 12, 2007, the City's negotiators declared it is at impasse on certain issues, including Local 145's request for a salary increase. Council Policy 300-06 provides for the impasse procedures, which includes an impasse meeting between the parties and, if necessary, an impasse hearing before City Council. This impasse hearing is scheduled for April 16, 2007 and the introduction of the salary ordinance is set to follow the resolution of this matter. It is anticipated that either: (1) the parties do not resolve the dispute and the City imposes its last, best, and final offer, or (2) the parties reach an agreement on salaries. In either case, the salaries are known and can be reflected in the introduction of the salary ordinance on April 16, 2007.

³ April 15 falls on a Sunday this year. Accordingly, it is appropriate to introduce the salary ordinance on the next business day, April 16, 2007. *See*, Cal. Code Civ. Proc. § 12a.

The April 15 deadline for introduction of the salary ordinance appears to be necessary to meet other time requirements in the Charter related to the budget and the annual appropriation ordinance. For instance, the budget must be approved by the Council prior to June 15, and after holding a minimum of two public hearings. Charter § 290(b). If the Council modifies the budget, the Mayor must within five business days of receipt, either approve, veto, or modify any line item approved by the Council. The Council then has five business days to override any vetoes or modifications made by the Mayor.

The budget necessarily includes the amounts specified in the salary ordinance in order to meet the balanced budget requirements of Charter section 71. The salary ordinance and the approved budget become the controlling documents for preparation of the annual appropriation ordinance. Charter § 290(a)(3), 290(b)(1) and 290(b)(2). The appropriation ordinance must be adopted during the month of July, again after a minimum of two public hearings. Charter § 71, 295(c). All of these deadlines are important to ensure the public's participation in the process and to provide time for the Mayor and Council to prepare, review and consider these documents.

Because a delay in any of these timelines could result in a failure to meet Charter requirements for adoption of the annual appropriation ordinance, continuances of matters with set deadlines should not be granted absent compelling reasons. Such reasons might include the lack of a quorum, the failure to obtain the necessary votes on an ordinance or resolution, or delays required to meet legal requirements governing labor negotiations. On the other hand, a delay requested because the Council chambers might not be large enough to accommodate a large turnout or the absence of some council members that will not result in the lack of a quorum, do not seem to rise to such a compelling reason to justify failing to meet the requirements of the Charter.

CONCLUSION

The Charter states that the salary ordinance fixing the salaries of all officers and employees of the City shall be introduced by the Council no later than April 15 of each year. The salary ordinance is proposed by the Mayor in a form consistent with any existing agreements with recognized labor organizations or otherwise in conformance with procedures governed by the Meyers-Milias-Brown Act or any other legal requirements governing labor relations that are binding upon the City. We read this Charter provision to contemplate the completion of collective bargaining by either an agreement between the City and the labor organizations or by imposition of the City's last, best, and final offer, at least with respect to salaries, prior to April 15 of each year. A continuance of the impasse hearing on April 16, 2007, will require a delay in

Honorable Mayor and City
Council members

-4-

April 16, 2007

the introduction of the salary ordinance. Such a delay may be justified and unavoidable in some cases. However, the Council should grant a continuance only if legally required to do so or in light of other compelling reasons. The reasons set forth by Local 145 do not meet this standard.

MICHAEL J. AGUIRRE, City Attorney

By

Michael J. Aguirre
City Attorney

MJA:jb

cc: Elizabeth Maland, City Clerk
ML-2007-6