

MEMORANDUM OF LAW

DATE: March 12, 1993

TO: Conny Jamison, City Treasurer

FROM: City Attorney

SUBJECT: Alternative Pay Structures for Selected Employees

You have asked for an opinion regarding the feasibility of giving selected employees a monetary bonus for productivity based upon a unit-of-output basis. You have asked if there are any legal impediments to this proposal.

The salary ordinance precludes the type of program you propose. Salaries are met and conferred on by the labor organizations and City management. Salaries are based upon job classifications. The agreements are subsequently codified in the annual salary ordinance pursuant to San Diego City Charter ("Charter") section 70. Charter section 70 provides that: "all increases and decreases of salary or wages of officers and employees shall be determined at the time of the preparation and adoption of the budget, and no such increase or decrease shall be effective prior to the fiscal year for which the budget is adopted . . . ." Your proposal would call for a distinct group of employees, within a given classification, to be afforded salaries in excess of those approved by the labor organizations and management and in contravention of the salary ordinance.

Additionally, there may be a perception of inequity by employees because one group of employees would be selected to receive additional compensation while other employees in the same job classification would be left without access to additional compensation. Also, the program would apply to select employees in one department only. Employees in other departments, doing the same type of work, would not be allowed to avail themselves of the increased salary. Although there may be no actual inequity, because the increased salary is based upon the increased workload, the appearance may be difficult to dispel.

A solution that is legally permissible for you to pursue, and that avoids other potential problem issues would be to adapt the merit pay program of the Employee Recognition and Awards Program found in Administrative Regulation ("AR") 95.91 to fit the needs of your proposal. The AR criteria for exceptional

merit cash payments found at AR 95.91 section 6 allows enough flexibility that monetary payments could be made to appropriate employees on a quarterly or even more frequent basis. The AR allows awards of up to a net amount of \$1,000.00 per year. By following the guidelines of the AR, any issues regarding differential treatment of employees in contravention of the salary ordinance will be avoided. Additionally, adapting the merit pay plan would be cost-effective because it would impose a yearly limit on the amount of additional salary employees might receive.

If you have further questions, please contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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cc Rich Snapper

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