

MEMORANDUM OF LAW

DATE: February 1, 1996

TO: F.D. Schlesinger, Director of Metropolitan Wastewater  
Department

FROM: City Attorney

SUBJECT: Pilot Incentive Program

You have asked for our preliminary review of a pilot program to implement an incentive program in which employees would receive cash rewards should established extraordinary standards of performance be reached or exceeded. Against this brief outline, you inquired if there were any fatal flaw or prohibition to such a program. While we find no legal prohibition for such a program, we outline procedural precedents that should be followed prior to implementation.

1. SALARY ORDINANCE

Ordinance Number O-18179 adopted on May 3, 1995 (salary ordinance) establishes the schedule of compensation for employees of the City for fiscal year 1995-96. Section 15 of the ordinance contains two (2) respective limits on exceptional performance compensation as follows:

A. EXISTING BENEFIT PROGRAMS

Section 15. Exceptional Performance  
Compensation

The City Council hereby authorizes the City Manager to establish and implement an Exceptional Performance Compensation Program. Such program shall include criteria under which employee performance shall be evaluated. Those employees judged to be exceptional performers may be granted one or more successive performance payments in an amount not to exceed an approximate net total (after taxes) of one thousand dollars (\$1,000) in any one fiscal year . . . .

A Managerial Exceptional Performance Plan is further implemented pursuant to the criteria for evaluation promulgated by the City Manager or nonmanagerial appointing authority. Such performance award shall not exceed a total (net after taxes) of three

thousand dollars (\$3,000) in any calendar year and shall be paid in not more than two increments . . . .

The provisions and procedures to implement this exceptional compensation are detailed at Sections 2.4, 2.5, and 7 of Administrative Regulation 95.91. The regulation essentially echoes the salary ordinance and incorporates the ceiling of not more than a net amount of \$1,000 during any fiscal year.

While both salary ordinance provisions have ceilings in the cash award, note that each bases the restriction on net receipt. Therefore, a worker can receive a \$1,000 award and still share in a group or supplemental award as long as his net receipt is not over \$1,000. Despite this ceiling, the salary ordinance authorizes a Managerial Exceptional Performance Plan with a \$3,000 net receipt ceiling. Clearly the salary ordinance ceiling prevails over the Administrative Regulation. McQuillin, Mun. Corp., Section 15.14 (3rd ed. 1989). Moreover the Managerial Exceptional Performance Plan (\$3,000 limit) expressly provides that the compensation is to be considered part of the base compensation, whereas the Exceptional Performance Program (\$1,000 limit) is expressly excluded from base compensation.

Accordingly an incentive program can be structured within the guidelines of the existing \$1,000 and \$3,000 limits.

#### B. NEW INCENTIVE PROGRAM

The existing salary ordinance also authorizes proposals for new benefit programs without the respective ceilings discussed above.

Section 16. Additional Benefit Programs  
The City Council may and does hereby declare its intent to establish, from time to time, upon recommendation of the City Manager, additional benefit programs for represented and unrepresented officers and employees via separate and specific Council action. Such additional benefit programs shall be and are hereby declared to be predicated upon the existence of ratified and executed Memoranda of Understanding with recognized employee organizations or such other conditions of qualification for unrepresented officers and employees as the legislative body, in its sole discretion, may establish.

By expressly authorizing "additional benefit programs," the existing ordinance allows for structuring of either pilot or permanent benefit programs unrestricted by the ceilings provided in Section 15. The only restriction is that such benefit programs must be authorized by "specific Council action." Hence you may structure a pilot incentive program with greater than \$1,000 or \$3,000 net awards

should same be approved by the Council.

## 2. MEET AND CONFER

The Meyers-Milias-Brown Act, California Government Code section 3500 et seq., imposes an obligation on employers to meet and confer in good faith with employees over wages, hours, and other terms and conditions of employment. Indeed both of the existing Memoranda of Understanding between the City and MEA and Local 127, respectively, recognize the right to meet and confer on performance incentives (Article 25 with MEA; Article 58 with Local 127). Moreover both require meet and confer thirty (30) working days in advance of any "new program" (Article 61 with MEA; Article 39 with Local 127).

Hence care should be taken to meet and confer with the appropriate labor representatives prior to implementing any pilot program involving cash incentives as this has a recognized impact on wages and terms and conditions of employment.

### SUMMARY

Under the existing salary ordinance: 1) an existing program permits cash awards utilizing a \$1,000 net receipt restriction; 2) a program utilizing a \$3,000 net receipt restriction can be established; and 3) a new incentive program with different limits can be fashioned as long as it is approved by the City Council. In keeping with the Meyers-Milias-Brown Act, the pilot incentive program would be subject to meet and confer provisions as outlined in employee organizations' respective Memoranda of Understanding.

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By

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