
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: November 13, 2009

IBA Report Number: 09-86

Rules Committee Date: November 18, 2009

Item Number: 2

Response to Audit Regarding City Attorney Salary and Leave Issues

OVERVIEW

On April 17, 2009, the Office of the City Auditor issued the Audit of Accounts of Michael Aguirre, Former City Attorney, in accordance with Article VII, Section 111 of the City Charter. The close-out audit is provided as Attachment 1 to this report. In summary, the audit revealed that the City Attorney is the only elected City official that receives Annual Leave benefits, and found that the process used to set the City Attorney's salary is not fully in compliance with City Charter Section 40 and Section 7 of the City's Salary Ordinance.

FISCAL/POLICY DISCUSSION

In response to the audit, the IBA agreed to work with the City Council to review these issues, and recommend corrective actions and improved procedures to ensure appropriateness and compliance with the law. This report describes these findings of the audit, and the IBA's recommended course of action for consideration by the Rules Committee and the City Council.

City Attorney Annual Leave

As discussed in the audit, the City Attorney position has been included as a member of the Executive Group in the City's Salary Ordinance. The classification of this position in this way has allowed the City Attorney to receive Annual Leave benefits. In addition, the City Attorney is included in Exhibit G, which lists positions entitled to Management

Administrative Leave, as described in Section 15.1 of the Salary Ordinance. Management Administrative Leave shall not exceed 80 hours in any fiscal year, and is provided in recognition of significant extra work time inherent in designated management positions.

The City's other elected officials (the Mayor and City Council) are paid a biweekly salary regardless of the number of hours worked, and do not accrue Annual Leave, and are not entitled to Management Administrative Leave. Annual Leave that is not used can be cashed out by the City Attorney. However, the City Attorney position is also considered part of the Legislative Group for retirement benefits, as are the other elected officials.

The audit describes that as a result of receiving Annual Leave benefits, the City paid the previous City Attorney approximately \$60,000 in unused Annual Leave. While no regulations or City policies were violated, the audit recommended that the City should consider the appropriateness of having the City Attorney position in both the Executive Group for Salary/Annual Leave benefits and the Legislative Group for retirement benefits.

Changes to future Salary Ordinances are recommended to address these issues, which would then require the consistent treatment of the City Attorney position with the City's other elected officials.

Annual Process to Set City Attorney Salary

The audit also states that the process used to set the City Attorney's salary is not fully in compliance with City Charter Section 40 and Section 7 of the City's Salary Ordinance. These governing documents state the City Attorney's salary shall be fixed by Council and set forth in the Annual Appropriation Ordinance. Additionally, City Charter Section 290(a)(3) states the Annual Salary Ordinance passed by Council shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.

Charter Section 40 states "The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year."

For both Fiscal Years 2009 and 2010, the City Council approved Salary Ordinances that provide a range of \$73,260 - \$292,596 for the City Attorney's annual salary. The Annual Appropriations Ordinance, which includes the budgeted amount for the City Attorney's salary as shown in the City's budget document (\$193,648), was also approved by the Council. However, the audit indicated that no supporting documentation was available to demonstrate the City Council's involvement in setting the City Attorney's actual salary.

The City Attorney's actual salary amount is not included in the Annual Salary Ordinance, while those of the City's other elected officials are specifically stated.

Council Policy 300-04

During the IBA's research of these issues, it was discovered that a Council Policy exists outlining a City Council salary review process for the City Attorney and other positions. Council Policy 300-04, titled "Annual Salary Review of Positions with Salaries Established by Council", has not been updated or revised since 1983. The existing policy provides a useful framework that would partially address the findings of the audit to ensure the Council's involvement in the salary setting process. However, changes are needed due to the transition to the Strong Mayor/Strong Council form of government, which altered the positions subject to the policy because of the City's changed organizational structure.

It is important to note that while the Council is to fix the salary of the City Attorney, the Charter provides that no decrease to the salary may occur during a term of the office. In the event a review results in a recommendation to propose a decrease in the salary of the City Attorney, that change could become effective only at the beginning of the next term of office.

IBA Recommended Corrective Actions

In developing recommended actions to respond to the audit findings, the IBA consulted with representatives of the Office of the City Attorney, the Office of the City Auditor, and the Personnel Director. Based on this work, the IBA recommends the Rules Committee and the City Council:

1. Request the City Attorney to prepare the next annual Salary Ordinance to:
 - a. Include a new section to specifically declare the City Attorney's annual salary, similar to Section 1 which states the annual salaries for the Mayor and Councilmembers
 - b. Remove the City Attorney position from Unclassified Executive V Group (Exhibit C of Salary Ordinance) to eliminate the salary range concept and the related Annual Leave benefits
 - c. Remove the City Attorney position from Exhibit G, eliminating the Management Administrative Leave benefit
2. Approve revisions to existing Council Policy 300-04 to reflect appropriate positions now subject to City Council salary review (City Clerk, IBA, City Auditor, and City Attorney) and outline an annual process for salary setting by the Council

Eliminating the Annual Leave and Management Administrative Leave benefits for the City Attorney does not prohibit the individual from vacation or time off, or reduce the annual salary. As with the other elected officials, a biweekly salary will be paid, regardless of the number of hours worked.

A proposed revised Council Policy 300-04 is provided as Attachment 2 to this report

As a related matter, the setting of the City Attorney's salary was discussed as part of the work of the Charter Review Committee in 2007. Possible alternatives to the current Salary Setting Commission process were discussed. At that time, consideration was given to including the salary of the City Attorney in the salary setting process which applies to the other elected officials (Mayor and Councilmembers), subject to the Salary Setting Commission. Other options were reviewed including the model which ties salaries of elected officials to that of California Municipal Court judges. Ultimately, no charter amendments were made that affected the Salary Setting Commission, or the salary setting requirements related to the position of the City Attorney.

In preparation of this report, the idea to request the Salary Setting Commission include the salary of the City Attorney in its review and recommendation process was explored; however, the Office of the City Attorney indicated it was not appropriate to expand the duties of the Commission beyond its role as required by the City Charter.

CONCLUSION

In April 2009, the Office of the City Auditor issued the Audit of Accounts of Michael Aguirre, Former City Attorney, in accordance with Article VII, Section 111 of the City Charter. The audit revealed that the City Attorney is the only elected City official that receives Annual Leave benefits, and found that the process used to set the City Attorney's salary is not fully in compliance with City Charter Section 40 and Section 7 of the City's Salary Ordinance. In response to the audit, the IBA agreed to work with the City Council to review these issues, and recommend corrective actions and improved procedures to ensure appropriateness and compliance with the law. This report describes these findings of the audit, and the IBA's recommended course of action for consideration by the Rules Committee and the City Council.

In developing recommended actions, the IBA consulted with representatives of the Office of the City Attorney, the Office of the City Auditor, and the Personnel Director. Based on this work, the IBA recommends the Rules Committee and the City Council:

1. Request the City Attorney to prepare the future annual Salary Ordinances to:

- a. Include a new section to specifically declare the City Attorney’s annual salary, similar to Section 1 which states the annual salaries for the Mayor and Councilmembers
 - b. Remove the City Attorney position from Unclassified Executive V Group (Exhibit C of Salary Ordinance) to eliminate the salary range concept and the related Annual Leave benefits
 - c. Remove the City Attorney position from Exhibit G of the Salary Ordinance, eliminating the Management Administrative Leave benefit
2. Approve revisions to existing Council Policy 300-04 to reflect appropriate positions now subject to City Council salary review (City Clerk, IBA, City Auditor, and City Attorney) and outline an annual process for salary setting by the Council

[SIGNED]

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[SIGNED]

APPROVED: Andrea Tevlin
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Attachments:

- 1) City Auditor Report: Audit of the Accounts of Michael Aguirre, Former City Attorney
- 2) Proposed Revisions to Council Policy 300-04 – Strikeout/Underline Version