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CITY OF OAKLAND  
CITY COUNCIL

### LEGISLATIVE ANALYST MEMORANDUM

**To:** Finance & Management Committee  
**From:** Sabrina Landreth, Legislative Analyst  
**Date:** July 22, 2008  
**Re:** **An Ordinance Setting The Council's Compensation Policies And Provisions For City Employees, Officials And Officers, and Memorializing The Authority And Discretion The Council Has Granted To The City Administrator Regarding Fixing Compensation**

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#### SUMMARY

Oakland City Charter section 207 charges the City Council with fixing the compensation of all City employees, officers and officials unless otherwise provided by another section of the Charter. It appears that is not always precisely clear what authority and discretion the Council has granted to the City Administrator regarding compensation over the years. This Ordinance memorializes the authority and discretion regarding fixing compensation as well as the Council's compensation policies and provisions for City employees, officers and officials, including compensation in the form of fringe benefits such as sick leave, vacation, management leave, automobile allowances.

The sole and complete authority and discretion that the Council has delegated to the City Administrator and other appointing authorities regarding compensation are set forth in this Ordinance and in Ordinance No. 12187 C.M.S. ("Salary Ordinance") which this Ordinance supplements. This Ordinance clarifies that the City Administrator and other appointing authorities have no additional authority to increase or change compensation by issuing Administrative Instructions or Employee Benefits circulars, or by signing agreements with collective bargaining units that have not been approved or ratified by the Council or otherwise.

#### BACKGROUND

The City Auditor released a Performance Audit of the City's Payroll and Compensation on November 29, 2007 and presented her audit at the December 11, 2007 Finance and Management Committee. The audit contained 14 findings and recommendations on the City's Payroll and Compensation practices. Subsequent to the audit's release, the City Administrator's Office has

revised several of its internal Administrative Instructions regarding payroll and compensation to implement additional controls as recommended by both the City Auditor and the Council. For example, employees are no longer allowed to receive a payroll advance in cases of "emergencies". This Ordinance is an effort to provide additional clarity on City policies for various compensation provisions. It addresses six of the issues raise during the audit.

## **POLICY DISCUSSION**

### ***Represented Employees***

Compensation for represented employees is set forth in its entirety in the Memoranda of Understanding between the City and the recognized employee organizations ("MOU"). This Ordinance clarifies that no additional compensation may be authorized by the City Administrator, any other appointing authority, any Department or Agency head or other employee, officer or official of the City without the City Council's express approval, except as provided in this Ordinance or Ordinance No. 12187 which this Ordinance supplements. Any such approval/authorization must be memorialized in an amendment to this ordinance or the MOU.

This Ordinance also states that neither the City Administrator, nor any Department or Agency Head or other City employee, official or officer has authority to change the compensation that is provided for represented employees under the MOUs. If the terms and conditions of City employment established by approved MOUs are inconsistent with any provisions of this Ordinance, such Memoranda will control with respect to the represented employees governed by that Memoranda.

### ***Unrepresented Employees***

Ordinance No. 12187 C.M.S. provides at section 2.20 that the City Administrator, by Administrative Instruction, may define the unrepresented employees, if any, to whom the terms and conditions of employment specified in MOUs may also apply. Ordinance No. 12187 thereby gives the City Administrator the discretion to grant unrepresented employees the same compensation and other terms and conditions of employment that are provided to represented employees under MOUs, or to provide unrepresented employees less compensation than the compensation that is provided to represented employees in each category or type of compensation. For example, if an MOU grants a cost of living increase to represented employees, the City Administrator may grant unrepresented employees the same increase or the City Administrator could grant unrepresented employees a lower cost of living increase or a one time "bonus" that would not increase the salary range.

This Ordinance also specifies that once the City Administrator determines which terms and conditions of employment will apply to unrepresented employees, the City Administrator must submit an annual report to Council at the end of the first quarter of each fiscal year detailing the terms and conditions of employment for unrepresented employees.

### ***Management Leave***

The MOU for Local 21 currently provides up to two weeks of management leave for employees in Local 21 and prohibits employees from carrying forward management leave to subsequent fiscal years. The MOU requires that employees take management leave or cash it out during the fiscal year in which it is granted – it is “use it or lose it”.

According to AI 516, employees in Units UK1, UN1, UR1, UU1, TM1, U31, U41 and U51 are eligible for zero to 10 days of Management Leave in lieu of overtime based upon the prior year’s performance upon the recommendation of the Department/Agency Head and with final approval from the City Administrator. Employees in Units UM1 and UM2 will be awarded 5 days of Management Leave. UM1 and UM2 employees may also be granted an additional 5 days based upon the recommendation of the Department/Agency Head and with final approval from the City Administrator. For all management employees, if performance has been sustained at a superior level the prior fiscal year, an additional zero to 5 days may be granted with approval of the City Administrator. AI 516 also notes that employees are allowed to cash out up to 15 days of Management Leave per year. In addition, they are allowed to carry over any unused leave to next fiscal year.

This Ordinance sets Management Leave at the level permitted by the MOU – two weeks (10 days). It also presents two options for the carryover and cash out of this leave: 1) an employee is not allowed to carry over management leave; or 2) Management Leave may be carried over for up to a maximum of \_\_\_\_ years.

### ***Vacation Leave***

According to the Local 21 MOU, an employee may accrue vacation leave up to a maximum of two times their annual vacation. Additionally, employees in Units TA1, TF1, TM2, and TW1 may buyback up to 15 days as long as they took at least 10 days vacation in the preceding calendar year. Employees in Units UM1, UM2, and UH1 may buyback up to 15 days. The Local 790 MOU also specifies that employees may accrue up to a maximum of two times their annual vacation. These employees may buyback up to 10 days of vacation leave if they took at least 10 days of vacation in preceding calendar year.

According to AI 545, an eligible employee for vacation leave buyback is a non-sworn employee who has taken at least 10 days of vacation leave in the preceding year (except for UM1, UM2, UH1, TM1 who may buyback vacation regardless of whether they have taken time off or not). AI 545 specifies that Local 790 employees can buyback a maximum of 10 days; Local 21 employees can buyback a maximum of 15 days. Unrepresented and executive management employees do not have explicit limits in AI 545.

This Ordinance specifies that the City Administrator and each other appointing authority has the authority and discretion to waive the vacation accrual cap for employees who are not able to take vacation due to a determination by the appointing authority that the employee’s services are needed on a time sensitive, urgent project. The appointing authority’s determination must be in writing and a copy of the determination must be provided to the City Administrator and placed in the employee’s personnel file. A separate determination must be made for each employee each

fiscal year. The City Administrator must provide the Council an annual report identifying the number of employees for whom the vacation cap was waived and the total amount of vacation that has been accrued in each City department in excess of the cap as well as the current monetary value of the vacation in excess of the cap for each Department.

This Ordinance also specifies that the City Administrator has the authority and discretion to authorize cashing out of vacation by issuing Administrative Instructions.

#### ***Automobile Allowances***

Agency Directors, Department Heads and Managers receive a monthly automobile allowance in accordance with Administrative Instruction No. 4403. This Ordinance requires that, if the City Administrator designates additional positions to receive automobile allowances in accordance with AI 4403, the City Administrator must provide an annual report to the Council identifying each of these positions.

No increase in the automobile allowances for unrepresented employees may be authorized by the City Administrator or any other appointing authority without the express approval of the City Council.

#### ***Sick Leave***

The City's current MOUs allow employees to cash out sick leave when they retire or separate from the city at a ratio of one day for each three days or for each two days of sick leave in the employee's sick leave bank, depending upon the MOU.

If employees do not cash out sick leave during their tenure in the City, given the upward trend in wages and salaries, the City will be obligated to cash out sick leave at a higher rate than the rate that was applicable when the employee earned the sick leave.

This Ordinance clarifies that the City Administrator is authorized by AI to determine the amount of sick leave that employees can cash out in any given year. The City Administrator also is authorized to transfer sick leave from an employee's leave bank upon the employee's authorization to the sick leave bank of employees who have exhausted their sick leave due to illness or injury.

#### ***Management Leave, Sick Leave, Vacation for Elected Officials***

The City Attorney and the City Auditor have received management leave and accrued sick leave and vacation for many years. No other elected officials receive such leave or accrue sick leave or vacation.

The draft of this Ordinance provides two options for Council's determination: 1) No elected official shall receive management leave, nor shall any elected official accrue sick leave or vacation after the effective date of this Ordinance; or 2) City Attorney and City Auditor each will accrue sick leave and vacation and they are entitled to receive management leave which must be countersigned. A proposed scenario is presented for the countersignature: signed by the City Auditor in the case of the City Attorney and by the City Attorney in the case of the City Auditor.

### ***Hiring Incentives***

In addition to the severance payments that are authorized under Section 2.10 of Salary Ordinance, the City Administrator and other appointing authorities have discretion after the effective date of this Ordinance to provide the following as hiring incentives to attract into City service qualified employees whose City services are exempt from the protections of the Civil Service under Article IX of the City Charter: (1) bonus vacation days placed in bank equal to or less than the number of days the employee will accrue during the first year of employment, and (2) up to two weeks of Executive Vacation Leave [need to define who is entitled to receive Executive Vacation Leave.]. The written hiring incentives must be memorialized in hiring agreements and the agreements will be maintained [in personnel file?] and summarized in an annual report to the Council. Executive Leave may be granted only at the time an employee is hired.

Currently, AI 516 specifies currently specifies that Executive Leave may be awarded by the City Administrator to agency/department heads and executive management positions. Up to 15 days leave may be awarded to an individual for each of the following: (a) in lieu of or as an augmentation of a salary bonus, and/or (b) as a hiring incentive for executive management positions. The leave may be granted at any time during the fiscal year at the discretion of the City Administrator. Executive Leave may be cashed out or taken as paid leave. Executive Leave not taken or cashed out by June 30 of each year is forfeited.

This Ordinance provides three options for the treatment of Executive Leave: 1) Executive Leave must be used or cashed out in the year in which it is awarded or it will be forfeited; 2) Executive Leave may be used or cashed out in the year in which it is awarded or carried forward to future years; or 3) Executive Leave may be used or cashed out in the year in which it is awarded, or carried forward for a maximum \_\_\_\_ years.

Section 2.10 of the Salary Ordinance specifies the following:

As a hiring incentive for attracting into City service qualified employees whose City services are exempt from the protections of the Civil Service under Article IX of the City Charter, the appointing authority is authorized to enter into hiring agreements promising to pay severance payments equivalent to up to three months of salary, and for employees who serve at least ten years, up to six months, in the event the City must terminate the employee's services through no fault of the exempt employee.

This Ordinance would add the Executive Leave and vacation bank provisions as additional potential hiring incentives. It would also clarify that all hiring agreements would be in writing.

### **CONCLUSION/ RECOMMENDATION**

It is recommended that Council approve the Ordinance (1) Amending The Salary Ordinance, (2) Setting Forth The Council's Compensation Policies And Provisions For City Employees,

Officials And Officers, (3) Memorializing The Authority And Discretion The Council Has  
Granted To The City Administrator Regarding Fixing Compensation And (4) Supplementing  
Ordinance No. 12187 C.M.S.