

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Department of Human Resources Management
DATE: October 27, 2009

RE: Supplemental Report to the Annual Report Detailing the Terms and Conditions of Employment for Unrepresented Employees As Required By Ordinance No. 12903 C.M.S.

SUMMARY

This supplemental report provides additional information related to the Annual Report detailing the terms and conditions of employment for unrepresented employees as requested at the October 13, 2009 Finance and Management Committee meeting. Attached to this report are Ordinance No. 12903 C.M.S. (*Attachment A*), Ordinance No. 12918 C.M.S. (*Attachment B*). An opinion from the Office of the City Attorney regarding the City Administrator's authority in granting Executive Leave per the Ordinances will be submitted separately.

FISCAL IMPACT

This is an informational supplemental report. There are no fiscal impacts.

BACKGROUND

Ordinance No. 12903 C.M.S., adopted November 18, 2008, sets forth the authority and discretion the Council has delegated to the City Administrator regarding fixing compensation as well as the compensation policies the Council has authorized for employees, officials, and officers. Specific provisions of the Ordinance include:

- Negotiated Memoranda of Understanding set forth compensation for represented employees in their respective bargaining groups and the City Administrator or any other appointing authority may not award any additional compensation without Council's express approval.
- For employees designated as unrepresented, the City Administrator may grant them the same compensation and other terms and conditions of employment and may not award any additional compensation without Council's express approval.
- No elected officials may receive or accrue management, sick, or vacation leave.
- The City Administrator and other appointing authorities may provide hiring incentives in the form of, 1) bonus vacation days 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

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Finance and Management Committee
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Leave. Executive Leave must be used within in the year in which it is awarded, or it will be forfeited unless the City Administrator allows an employee to carry over Executive Leave.

- An annual report to Council must be provided that details Executive Leave being carried over and the monetary value of the balances.

Ordinance No. 12918 C.M.S., adopted March 3, 2009, limits the authority and discretion of the City Administrator or any other appointing authority with respect to the initial salary and other compensation for agency and department heads. Specific provisions of the Ordinance include:

- The appointing authority may appoint a new agency or department head at any point in the applicable salary range up to the midpoint.
- Any initial salary above the midpoint in the salary range for the classification must be approved by Council.
- Council must approve any hiring agreement that provides terms or compensation for agency or department heads other than those provided in the memoranda of understanding with the City's bargaining groups except the appointing authority may:
 - offer new agency or department heads severance payments authorized under Ordinance No. 12187 C.M.S.;
 - offer Executive Leave and bonus vacation days authorized by Ordinance No. 12903 C.M.S.; *and*
 - Executive Leave may be carried over for a maximum of two years.

KEY ISSUES AND IMPACTS

All of the employees with Executive Leave balances currently in the system were hired prior to the adoption of Ordinance No. 12918 C.M.S. Although it is within the authority of the City Administrator to do so, there have been no new awards of Executive Leave since the ordinance was adopted. Those employees who have leave balances that they are carrying forward are doing so with the understanding that they may carry those balances through the current fiscal year, but must use them or cash them out within two years of their hire date or by June 30, 2010 – whichever is later.

SUSTAINABLE OPPORTUNITIES

No environmental, economic, or social equity opportunities have been identified.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior access issues contained in this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council accept this supplemental report.

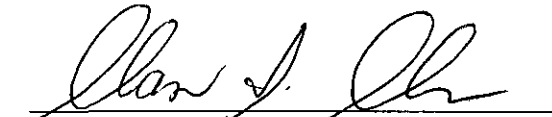
Respectfully submitted,



Wendell L. Pryor, Director
Department of Human Resources Management

Prepared by:
LaWanna Preston, Human Resource Manager
Department of Human Resources Management

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


Office of the City Administrator

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY

FILED

OFFICE OF THE CITY CLERK
INTRODUCED BY COUNCIL MEMBER

2008 DEC -3 AM 8:57

ORDINANCE NO. 12903 C.M.S.

AN 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.

WHEREAS, Oakland City Charter section 207 charges the City Council with fixing the compensation of all City employees, officers and officials unless otherwise provided by the Charter; and

WHEREAS, the Council has determined that it is not clear precisely what authority and discretion the Council has granted to the City Administrator regarding compensation over the years; and

WHEREAS, the City Council desires to memorialize the authority and discretion it has granted to the City Administrator 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 and automobile allowances; now therefore

The City Council of the City of Oakland does ordain as follows:

- Sec. 1.00 Purpose. This ordinance sets forth the authority and discretion the Council has delegated to the City Administrator regarding fixing compensation as well as the compensation policies and provisions that the Council has authorized for employees, officials and officers.
- Sec. 1.10 Represented Employees. Compensation for represented employees is set forth in its entirety in the Memoranda of Understanding ("MOU") between the City and the recognized employee organizations.

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.

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 an approved MOU are inconsistent with any provisions of this ordinance, such Memoranda shall control with respect to the represented employees governed thereby.

Sec. 1.20 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 "payment" that would not increase the salary range.

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. which this ordinance supplements.

The City Administrator and other appointing authorities have absolutely no additional authority to increase or change compensation by issuing Administrative Instructions, Employee Benefits circulars, General Orders, or any other instruction, order or document; or by signing agreements, including but not limited to side letters, with collective bargaining units that have not been approved or ratified by the Council or otherwise.

Once the City Administrator determines which terms and conditions of employment will apply to unrepresented employees, the City Administrator will submit an annual report to Council at the end of the first quarter of the fiscal year detailing the terms and conditions of employment for unrepresented employees.

Sec. 1.30 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.

No elected official shall receive management leave, nor shall any elected official accrue sick leave or vacation after the effective date of this Ordinance.

Sec. 1.40 Hiring Incentives. In addition to the severance payments that are authorized under Section 2.10 of Ordinance No. 12187 C.M.S., 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 (2) up to two weeks of Executive Vacation Leave.

The written hiring incentives must be memorialized in hiring agreements and the agreements will be maintained in the employee's personnel file and summarized in an annual report to the Council. Executive Leave may be granted only at the time an employee is hired.

Executive Leave must be used in the year in which it is awarded or it will be forfeited; the City Administrator and other appointing authorities can allow an employee to carry over Executive Leave if the employee is not able to use Executive Leave due to a determination by the appointing authority that the employee's services are or were needed on a time sensitive or 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 and for each fiscal year. The City Administrator must provide the Council an annual report identifying the number of employees who were authorized to carry over Executive Leave to a subsequent fiscal year and the total amount of Executive Leave that has been carried over in each City department and the current monetary value of the Executive Leave that has been carried over in each Department.

Sec 1.50 Bonuses. Employee bonuses shall only be given if explicitly budgeted for as part of a bonus program by the Council.

Sec. 1.60 Amendments. Amendments to any provision of this ordinance shall hereinafter be entitled "Amendments to the Salary Ordinance".

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 18 2008

PASSED BY THE FOLLOWING VOTE:

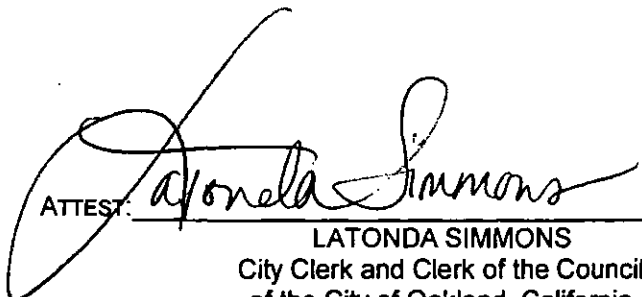
AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, KERNIGHAN, NADEL, QUAN, AND ~~REID~~ - 7

NOES- ~~0~~

ABSENT- Reid - 1

ABSTENTION- ~~0~~

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

09 MAR 13 PM 2:14

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY


 City Attorney

ORDINANCE NO. 12918 C.M.S.

An Ordinance (1) Amending the Salary Ordinance to Provide that the City Council Must Approve Terms and Compensation in Hiring Agreements for Department and Agency Heads Other Than (a) Initial Salary Up to the Midpoint of the Salary Range, (b) Severance Pay Authorized by Ordinance No. 12187 C.M.S., (c) Executive Leave and Bonus Vacation Authorized by Ordinance No. 12903 C.M.S., with Certain Amendments, and (d) Terms and Conditions Provided in the Memoranda of Understanding between the City and its Recognized Miscellaneous Employee Organizations and (2) Supplementing and Amending Ordinance Nos. 12187 C.M.S. and 12903 C.M.S.

WHEREAS, Oakland City Charter section 207 charges the City Council with fixing the compensation of all City employees, officers and officials unless otherwise provided by the Charter; and

WHEREAS, the Council has established salary ranges for employees and adopted salary ordinances, namely Ordinance Nos. 12187 and 12903 C.M. S., that grant the appointing authority the discretion to (1) set the initial salary of employees who they hire at any point in the salary range for the classification in question, if there has been unusual difficulty in recruiting and (2) grant severance pay, as a hiring incentive to employees who are exempt from Civil Service and must be terminated through no fault of the employee, equivalent to 3 months of salary if the employee has completed less than 10 years of service and up to six months of salary if the employee has completed ten years of service; and (3) grant certain Executive Leave and bonus vacation days at the time of hiring employees who are exempt from Civil Service; and

WHEREAS, during these challenging economic times that have resulted in significant budget deficits and layoffs of employees, the Council desires to further limit the discretion of appointing authorities with respect to setting initial salary and providing other terms and forms of compensation to department and agency heads; now therefore

The City Council of the City of Oakland does ordain as follows:

Sec. 1.00 Purpose. This ordinance further limits the authority and discretion of the appointing authority solely with respect to fixing compensation and other terms and conditions of employment in hiring agreements for department heads and agency directors.

Sec. 1.10 Initial Salary and other Compensation for Agency and Department Heads.

Notwithstanding any other provision of this Ordinance, Ordinance No. 12187, Ordinance No. 12903 or any other Ordinance, the initial salary of an agency or department head in the City shall be the salary attached to the lowest rate of the salary schedule established for the classification to which he/she is appointed; provided however, that the appointing authority may appoint a new agency or department head at any point in the applicable salary schedule for the classification involved, up to the midpoint of the salary range, if there has been unusual difficulty in recruiting competent employees at the lowest rate of the applicable salary schedule and the higher rate is commensurate with the education and experience of the appointee. Any initial salary higher than the midpoint in the salary range for the classification in question must be approved by the City Council.

The City Council must approve any hiring agreement that provides terms or compensation for department or agency heads other than those provided in the memoranda of understanding between the City and its recognized miscellaneous employee organizations, with the following exceptions: the appointing authority may offer new department and agency heads the severance payments authorized under section 2.10 of Ordinance No. 12187 C.M.S. and the Executive Vacation Leave and the bonus vacation days authorized by Ordinance No. 12903 C.M.S. The Executive Vacation Leave authorized by Ordinance No. 12903 C.M.S. may be granted only at the time an employee is hired for one time only and only for one year and that Executive Leave may be carried over for a maximum of two years.

Sec. 1.20 Conflicts. If there is any conflict between the provisions of this Ordinance and Ordinance Nos. 12187 or 12903 which this Ordinance supplements and amends, this Ordinance's provisions shall govern.

Sec. 1.30 Amendments. Amendments to any provision of this ordinance shall hereinafter be entitled "Amendments to the Salary Ordinance".

IN COUNCIL, OAKLAND, CALIFORNIA MAR 3 2009

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, - 7

~~NOES~~

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST

Latonda Simmons
LATONDA SIMMONS

City Clerk and Clerk of the Council
Of the City of Oakland, California

Date of Attestation 3/23/09