

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
PUBLIC LEGAL OPINION

TO: Councilmember Ramachandran, Council President Bas and Members of the City Council

FROM: Selia Warren
Supervising Deputy City Attorney

DATE: June 12, 2023

RE: **Public Legal Opinion – Roles of the Public Ethics Commission and the City Council With Regard to the Salaries of the City Attorney and City Auditor**

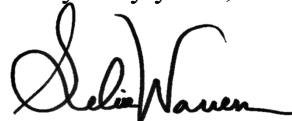
Dear Councilmember Ramachandran, Council President Bas, and Members of the City Council:

Attached please find a public legal opinion responding to the questions posed by Councilmember Ramachandran and addressing the roles of the City Council and the Public Ethics Commission with regard to the salaries of the City Attorney and City Auditor.

This is a public legal opinion because it interprets the City Charter and the powers and duties of the City Council and the Public Ethics Commission. Like all of our public legal opinions, this opinion will be posted on the City Attorney's website at www.oaklandcityattorney.org.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



SELIA M. WARREN


Supervising Deputy City Attorney

Attachment

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MEMORANDUM

TO: Councilmember Ramachandran

FROM: Karen Getman 

DATE: June 12, 2023

RE: Roles of the Public Ethics Commission and the City Council With Regard to the Salaries of the City Attorney and City Auditor

QUESTIONS PRESENTED

1. What role, if any, does the City Council play with regard to the salaries of the City Attorney and City Auditor given the changes made by Measure X?
2. If the City Council, or the Council's Finance Committee, rejects the salaries approved by the Public Ethics Commission (PEC), does the matter go back to the PEC for discussion, or is the Council required to approve what the PEC has proposed?

BRIEF ANSWERS

1. The Council authorizes appropriations to fund the salaries of the City Attorney and City Auditor through the annual budget process.
2. The Council may ask questions about the PEC's salary determinations through its public hearings on the budget. The PEC may reconsider its determinations as a result, or it may confirm its prior actions. Either way, the Council must incorporate the PEC's final decision into its annual budget.

ANALYSIS

Measure X, enacted by the voters at the November 2022 general election, made substantive changes to the manner in which the salaries of the City Attorney and City Auditor are set. Previously the setting of those salaries was entrusted solely to the City Council, acting within parameters set forth in the Charter. Charter § 209 ("The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter."). After passage of Measure X, the PEC was given sole authority to set the salaries of the City Attorney and City Auditor, within the new parameters set by the Charter.

Charter section 401(1) now reads in relevant part:

The salary of the elected City Attorney shall be set annually by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Charter § 401(1).

With regard to establishing the salary of the City Auditor, Measure X amended the Charter to read as follows:

The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Charter § 403(1).

The City Council, however, retains full authority for considering and enacting the City's annual budget, taking into account information provided by the City Administrator and other officers, departments and commissions regarding required and recommended expenditures. The enacted budget authorizes appropriations for the coming fiscal year, including appropriations for salaries.

Each department, office and agency of the City shall provide in the form and at the time directed by the Mayor and City Administrator all information required by them to develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the Council. Under the direction of the Mayor and Council, the City Administrator shall prepare budget recommendations for the next succeeding fiscal year which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution. Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year, failing which the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted.

Charter § 801.

The PEC is authorized to set the salaries of the City Attorney and the City Auditor, but it has no authority to appropriate the funds to pay those officials. Both the Council and the PEC must follow the Charter.

Given these principles, it seems clear that the PEC has sole authority to set the salaries for the City Attorney and the City Auditor. However, as part of its legislative role to adopt the City budget, the Council may hold public hearings inquiring into PEC's decision and may express its views, including disagreeing with the PEC's methodology or suggesting that the PEC reconsider any or all aspects of its decision. The PEC is not required to reconsider or change its decision at the Council's suggestion, but it may do so, if on further review the PEC agrees that its initial decision is inconsistent with the Charter requirements or otherwise is in error. Either way, the salaries set by the PEC according to Measure X must be incorporated into the annual budget adopted by the Council, and into the salary ordinance required by California Code of Regulations section 570.5.