



CITY OF OAKLAND
CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT -2 PM 4:19

LEGISLATIVE ANALYST MEMORANDUM

To: Finance & Management Committee
From: Sabrina Landreth, Legislative Analyst
Date: October 14, 2008
Re: **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.**

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 seeks to clarify that the City Administrator and other appointing authorities have no additional authority to increase or change compensation for employees without Council approval.

Per the Finance and Management Committee's direction on July 22, 2008, this ordinance has been amended as follows:

- 1) *Removed Sections 1.30 through 1.70 regarding management leave, vacation, vacation cash out, automobile allowances, and sick leave, respectively.*
- 2) The word "bonus" in Section 1.20 was changed to "payment"
- 3) Language added to Section 1.20 to explicitly state that the City Administrator and other appointing authorities have 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 unless these agreements have been approved or ratified by the Council.
- 4) States that no elected official shall receive management leave, nor shall any elected official accrue sick leave or vacation after the effective date of this ordinance.
- 5) Directs that written hiring agreements be maintained in the employee's personnel file.
- 6) Specifies that unused Executive Leave may not be cashed out, and that it may only be carried over if the employee is not able to use it due to a determination by the appointing authority that the employee's services are or were needed on a time sensitive or urgent project.

Item _____
Finance & Management Committee
October 14, 2008

- 7) Clarifies that employee bonuses can only be given if explicitly budgeted for as part of a bonus program.

FILED
 OFFICE OF THE CITY CLERK
 INTRODUCED BY COUNCIL MEMBER

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY

2008 OCT -2 PM 4:19

ORDINANCE NO. _____ 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, _____, 2__

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

INTRODUCED BY COUNCILMEMBER _____

DRAFT FILED
CITY CLERK OF THE CITY OF OAKLAND

ORDINANCE NO. _____ C.M.S.

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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. 1.80 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.

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Sec. 1.30. Management Leave Sec. 1.30. Management Leave. The MOUs for Local 21 currently provide up to two weeks of management leave for employees in Local 21 and prohibit employees from carrying forward management leave to subsequent fiscal years. The Local 21 MOU requires that employees take management leave or cash out management leave during the fiscal year in which it is granted. ¶~~

~~¶
The City Administrator has issued an Administrative Instruction No. 516 which provides for up to three weeks of management leave per year and allows represented and unrepresented employees to carry forward management leave. A number of employees have carried forward Management Leave ¶~~

~~¶
The City is currently engaged in collective bargaining with its various recognized employee organizations. Subject to any necessary bargaining or other legal obligations, the Council's policy as reflected in the Local 21 MOU is that employees may not carry forward management leave to subsequent fiscal years; provided that~~

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~~Deleted: he City Administrator and other appointing authorities have the authority and discretion to allow an employee to carry over management leave if the employee is not able to use management 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 ... [1]~~

~~Deleted: Sec. 1.70. 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 th ... [2]~~

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. 1.90

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.

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OR ¶
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City Attorney and City Auditor each will accrue sick leave and vacation and they are entitled to receive management leave which must be countersigned by the City Auditor in the case of the City Attorney and by the City Attorney in the case of the City Auditor. ¶

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.

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

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OR ¶
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Executive Leave may be used or cashed out in the year in which it is awarded or carried forward to future years. ¶
OR ¶
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Executive Leave may be used or cashed out in the year in which it is awarded, or carried forward for a maximum ___ years. ¶

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2__

PASSED BY THE FOLLOWING VOTE:

- AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, KERNIGHAN, NADEL, QUAN, AND REID
- NOES-
- ABSENT-
- ABSTENTION-

he City Administrator and other appointing authorities have the authority and discretion to allow an employee to carry over management leave if the employee is not able to use management 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 management leave to a subsequent fiscal year and the total amount of management leave that has been carried over in each City department and the current monetary value of the management leave that has been carried over in each Department.

OR

The City's policy is that management leave may be carried over up to a maximum of ____ years, provided that the City Administrator and other appointing authorities have the authority and discretion to allow an employee to carry over management leave if the employee is not able to use management 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 management leave to a subsequent fiscal year and the total amount of management leave that has been carried over in each City department and the current monetary value of the management leave that has been carried over in each Department.

Sec. 1.40 Vacation. The Council's current policy regarding accrual of vacation provides that employees may accrue a maximum of two year's of vacation. Employees cease to accrue vacation when they reach the cap.

The City Administrator and each other appointing authority have 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.

Sec. 1.50 Vacation Cash Out. The Council is mindful that employees are entitled to cash out any accrued vacation they may have at the time that they retire or leave City employment. The City Administrator has the authority and discretion to authorize cashing out of vacation by issuing Administrative Instructions.

Sec. 1.60 Automobile Allowances. Agency Directors, Department Heads and Managers receive a monthly automobile allowance in accordance with Administrative Instruction No. 4403. 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.

The provisions of this section shall not apply to employees represented by a recognized employee organization whose entitlement shall be governed by the terms of approved memoranda of understanding, if any, nor shall they apply to Special Clerkships in the Office of the City Clerk, nor to part-time positions.

Sec. 1.70 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.

The Council is mindful that 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. The Council also recognizes the importance of having employees maintain a minimum amount of sick leave in case of unanticipated emergencies, illnesses or injuries.

The City Administrator is authorized by Administrative Instruction 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.

The provisions of this section shall not apply to employees represented by recognized employee organizations whose entitlement shall be governed by the terms of approved Memoranda of Understanding, if any, nor shall they apply to Special Clerkships in the Office of the City Clerk, nor to part-time positions.