

**CITY OF OAKLAND
AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 JUN 23 PM 5: 58

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Public Ethics Commission
Date: June 29, 2004

Re: A REPORT AND RECOMMENDATION TO AMEND ORDINANCE NO. 4727 C.M.S. TO ADJUST THE MONTHLY SALARY SCHEDULE FOR THE CLASSIFICATION OF COUNCILMEMBER AND TO ADOPT A RESOLUTION AUTHORIZING ADJUSTMENTS TO CITY COUNCIL OFFICE BUDGETS FOR FY 2003-04 AND FY 2004-05 TO ACCOMMODATE A 5.0 PERCENT INCREASE IN ANNUAL SALARY FOR CITY COUNCIL MEMBERS, FROM \$60,000 TO \$63,000.

SUMMARY

Staff has prepared an amendment to Oakland's salary ordinance (Ordinance No. 4727) to increase the monthly salary for the office of City Councilmember by \$250.00.

Attachment 1. A resolution authorizing adjustments to the City Council office budgets has also been prepared to accommodate this adjustment for FY 2003-04 and FY 2004-05. **Attachment 2.**

The above salary adjustment has been made pursuant to City Charter Section 202(c) which authorizes the Oakland Public Ethics Commission ("Commission") to adjust the salary for the office of City Councilmember by an amount of up to five percent annually beginning in FY 2003-2004. The Commission took action to increase City Council salaries by five percent at its regular meeting of June 7, 2004.

According to the Office of the City Attorney, City Council action on these items is "ministerial" in nature and not discretionary.

Staff recommends approval of the amendment and resolution.

FISCAL IMPACT

A total of \$1,730.74 will be appropriated from the General Fund for FY 2003-04. A total of \$26,820.00 will be appropriated from the General Fund for Fiscal Year 2004-05 and annually thereafter. These amounts include corresponding adjustments to City-paid contributions to PERS. Staff proposes that the additional appropriations in FY 2003-04 and FY 2004-05 be funded from the General Purpose Fund.

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BACKGROUND

The Commission established current City Council salaries in November, 1997, in the annual amount of \$60,000. The previous annual salary amount was \$36,900.

In November, 1998, Oakland voters adopted Measure X, which amended the Commission's salary-setting authority by providing that any future salary increase must be approved by a public vote.

In March, 2004, Oakland voters adopted Measure P which now authorizes the Commission to adjust City Council salaries annually "by the increase in the consumer price index over the preceding year." The Commission may also adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any annual increase beyond five percent must be approved by the voters.

At its regular meeting of June 7, 2004, the Commission adopted Resolution 04-01 which approved a five percent salary increase for City Councilmembers, effective immediately. **Attachment 3.** The Commission found that City Council salaries have not been adjusted since November, 1997, during which time the consumer price index has increased approximately 22 percent. The Commission also found that Oakland City Council salaries are approximately \$275 less than the average monthly salary for councilmembers in eight of the largest cities in California.

KEY ISSUES AND IMPACTS

There are two actions which the City Council must take in order to effect the Commission's decision. The first is to amend the City's salary ordinance to reflect the new salary level. The second is to make an adjustment to the FY 2003-04 and FY 2004-05 budget.

When the Commission last established City Council salaries in 1997, the City Council approved an amendment to the City's salary ordinance, No. 4727, to reflect the new salary level. According to the Office of the City Attorney, the City Council should amend the salary ordinance to reflect the Commission's latest adjustment. Attachment 1 codifies the new salary level.

There are no funds specifically budgeted to pay for the salary increase during the 2003-05 fiscal years. The authority for the Commission to adjust City Council salaries was granted after the current budget was adopted. A total of \$1,730.74 is now required for FY 2003-04 and \$26,820.00 will be required in 2004-05. Staff proposes that the salary increases in FY 2003-05 be funded from the General Purpose Fund.

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The Office of the City Attorney advises that the above two actions are non-discretionary, "ministerial" actions which the City Council must take so that the Commission's decision can be carried out. The City Attorney has previously advised that the failure to amend the salary ordinance to effect the Commission's decision could subject the City to a court order requiring the City Council to comply with its ministerial duties. **Attachment 4.**

SUSTAINABLE OPPORTUNITIES

There are no direct economic, environmental or social equity opportunities or impacts associated with the City Council action requested in this report.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no direct disability and senior access impacts associated with the City Council action requested in this report.

ALTERNATIVE RECOMMENDATION

With the adoption of Measure P, the Commission will be required to adjust City Council salaries annually by at least the increase in the consumer price index. Because of the Commission's new duty to annually adjust City Council salaries, the City Council may wish to modify the proposed amendment so that future salary adjustments by the Commission will no longer require an amendment to the City salary ordinance. This will avoid the time consuming process of amending the salary ordinance merely to effect a decision which Oakland voters have authorized the Commission to make on its own.

RECOMMENDATION

Staff recommends that the City Council adopt the proposed amendment to the City salary ordinance effecting a five percent increase to the salary for the office of City Councilmember and to adopt the proposed resolution authorizing adjustments to the City Council office budgets for FY 2003-04 and FY 2004-05.

Respectfully submitted,

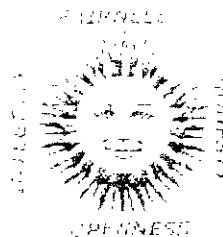

Daniel G. Purnell, Executive Director
Oakland Public Ethics Commission

APPROVED FOR FORWARDING TO THE
CITY COUNCIL


OFFICE OF THE CITY ADMINISTRATOR

Item: 2.5
City Council
June 29, 2004

**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
RESOLUTION NO. 04-01**



BY ACTION OF THE OAKLAND PUBLIC ETHICS COMMISSION:

WHEREAS, Oakland City Charter Section 202(c) previously authorized the Oakland Public Ethics Commission ("Commission") to establish a base salary for City Councilmembers; and

WHEREAS, after substantial study and review, the Commission took action in October, 1997, to establish the base salary for City Councilmembers in the amount of \$60,000 per year; and

WHEREAS, in March, 2004, Oakland voters amended City Charter Section 202(c) to provide that the Commission shall annually adjust City Councilmember salaries by the increase in the consumer price index over the preceding year, and that the Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent; and

WHEREAS, the consumer price index for the San Francisco Bay Area increased by a total of 0.5 percent between April, 2003, and April, 2004, inclusive; and

WHEREAS, between November, 1997, when current City Council salaries were established and April, 2004, the consumer price index for the San Francisco Bay Area has increased approximately 22 percent; and

WHEREAS, the monthly salary for Oakland City Councilmembers is approximately \$275 less than the average monthly salary for councilmembers in eight of the largest cities in California; and

WHEREAS, City Council salaries have not been increased or adjusted since November, 1997, and

WHEREAS, the Commission desires to preserve the existing base salary for Oakland City Councilmembers against increases in the cost of living and keep City Councilmember salaries consistent with the average monthly salaries for councilmembers in other large California cities;

NOW, THEREFORE BE IT

RESOLVED, that the Commission does hereby increase and adjust the salary for the office of City Councilmember by five (5.0) percent effective immediately; and

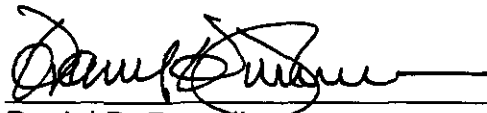
RESOLVED, that the Commission does hereby direct staff to prepare a final version of this Resolution and take all reasonable actions to ensure its timely implementation.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission ("Commission") held on June 7, 2004. A quorum of the membership of the Commission was present at the meeting. A motion approving the Resolution was made and seconded, and the motion was adopted by a majority of said quorum.

I hereby certify that the foregoing is true and correct.

Dated: 6/8/04



Daniel D. Purnell
Executive Director
Oakland Public Ethics Commission

CITY OF OAKLAND



ONE CITY HALL PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Jayne W. Williams
City Attorney
Jayne W. Williams

November 18, 1997

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

REDEVELOPMENT AGENCY AND OAKLAND CITY COUNCIL
Oakland, California

Mayor Harris and Members of the City Council:

Re: Legal Opinion Regarding the Duty of the Oakland City'
Council to Adopt Salary Set by the Public Ethics
Commission

The Public Ethics Commission was established pursuant to an amendment to Oakland City Charter section 202 by a vote of the electorate on November 5, 1996. The Public Ethics Commission has among other duties the duty of setting City Council salaries. Prior to the amendment of section 202, the City Council set its own salary. Salaries in the City of Oakland are authorized pursuant to the Salary Ordinance; this includes, the Oakland City Council's salary and the Mayor's salary. If the Public Ethics Commission establishes the City Council salary in compliance with the conditions set forth in Charter section 202 (c) and communicates its action to the City Council, the City Council is mandated to adopt an ordinance amending the Salary Ordinance to provide for a City Council salary in the amount set by the Public Ethics Commission.

Charter section 202 (c) provides that:

(c) The Public Ethics Commission shall set the compensation for the office of Councilmember which shall be reviewed by the Commission and adjusted, as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent (10%) above the base salary, as adjusted."

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11.18.97

HONORABLE CITY COUNCIL
Oakland, California
November 18, 1997
Page Two

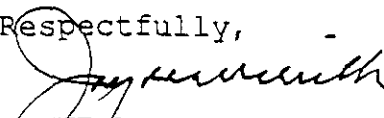
Although legislative action is normally discretionary, the City Council action amending the salary ordinance to provide for the Oakland City Council salary set by the Public Ethics Commission is ministerial in nature. The City Council could only refuse to adopt an ordinance with the salary set by the Public Ethics Commission if the Public Ethics Commission did not in 1997 establish a base salary for the office of Councilmember at a level which was the same as or greater than that which was currently received.

As an example of legislative action which is ministerial and not discretionary, approval of a final map under the Subdivision Map Act is ministerial if all the requirements of the Subdivision Map Act and the ordinance regulating and controlling the design and improvement of subdivisions are met, regardless of whether or not the legislative body likes the project. (Youngblood v. Board of Supervisors (1978) 22 Cal. 3d 644 and Kriebel v. City of San Diego (1980) 112 Cal.App.3d 342.) Similarly the City Council must adopt legislation to place initiative measures on the ballot if the petitions contain the requisite number of signatures regardless of whether or not the City Council agrees with the content of the measures. (Elections Code § 9214 and 9215.)

If a legislative body does not adopt legislation which it is required to adopt as its ministerial duty, then the legislative body's failure to act is subject to review by the court and order by the court to the legislative body to comply with its ministerial duty in an administrative mandamus action. (CCP § 1094.5.)

In conclusion, I recommend that the Oakland City Council adopt the ordinance amending the Salary Ordinance to increase the Oakland City council salaries in the amount set by the Public Ethics Commission.

Respectfully,


JAYNE W. WILLIAMS
City Attorney

2.5
SPECIAL
CRA/COUNCIL

JWW:msm
Attorney Assigned:
Joyce M. Hicks

JUN 29 2004

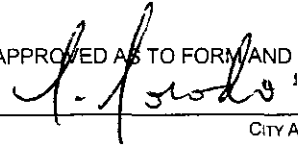
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11-18-97

FILED
OFFICE OF THE CITY CLERK
INTRODUCED BY COUNCIL MEMBER _____

2004 JUN 23 PM 5:58

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 4727 C.M.S. TO ADJUST THE MONTHLY SALARY SCHEDULE FOR THE CLASSIFICATION OF COUNCIL MEMBER

The City of Oakland does hereby ordain as follows:

SECTION 1. The monthly salary scheduled for the classification of Council Member is hereby amend to read as follows in Ordinance No. 4727 C.M.S.:

Salary/Wage Steps

<u>Classification Name</u>	<u>Class</u>	<u>Monthly Rate</u>
Council Member	9005	5,250

SECTION 2. The monthly rate set forth herein is effective as of June 7, 2004. The provision of this ordinance is effective upon passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

2.5-1
SPECIAL
CRA/COUNCIL

JUN 29 2004

**AN ORDINANCE AMENDING ORDINANCE NO. 4727 C.M.S. TO ADJUST THE
MONTHLY SALARY SCHEDULE FOR THE CLASSIFICATION OF
COUNCILMEMBER**

NOTICE AND DIGEST

This amendment authorizes an increase in the monthly salary for the office of councilmember from \$5,000 per month to \$5,250 per month. The monthly salary rate set forth in the ordinance is effective as of June 7, 2004. The provision of this ordinance is effective upon passage.

2.5-1
SPECIAL
CRA/COUNCIL

JUN 29 2004

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Resolution No. _____ C.M.S.

2004 JUN 23 PM 5:58

RESOLUTION AUTHORIZING ADJUSTMENTS TO CITY COUNCIL OFFICE BUDGETS FOR FY 2003-04 AND FY 2004-05 TO ACCOMMODATE A 5.0 PERCENT INCREASE IN ANNUAL SALARY FOR CITY COUNCIL MEMBERS, FROM \$60,000 TO \$63,000

WHEREAS, Oakland City Charter Section 202(c) previously authorized the Oakland Public Ethics Commission ("Commission") to establish a base salary for City Councilmembers; and

WHEREAS, the Commission took action in October, 1997, to establish a base salary for City Councilmembers in the amount of \$60,000 per year; and

WHEREAS, in March, 2004, Oakland voters amended City Charter Section 202(c) to provide that the Commission shall annually adjust City Councilmember salaries by the increase in the consumer price index over the preceding year, and that the Commission may annually adjust salaries beyond the increase in the consumer price index up to a total of five percent; and

WHEREAS, on June 7, 2004, the Commission adopted a Resolution increasing and adjusting the salary for the office of City Councilmember by five (5.0) percent effective immediately; and

WHEREAS, the above salary increase will result in an estimated total budget impact (including associated benefit and retirement costs) for the eight City Council offices (including At-Large) of \$1,730.74 for Fiscal Year 2003-04 and \$26,820.00 for Fiscal Year 2004-05;

NOW, THEREFORE BE IT

RESOLVED: that the Commission has increased the annual salary of City Council members pursuant to Measure P by 5.0 percent, from \$60,000 to \$63,000, effective as of June 7, 2004, and be it further

RESOLVED: that Fiscal Year 2003-04 budgets of all City Council districts and the At-Large office be increased by \$216.34 each, for a total of \$1,730.74; and be it further

RESOLVED: that Fiscal Year 2004-05 budgets of all City Council districts and the At-Large office be increased by \$3,352.50 each, for a total of \$26,820.00; and be it further

RESOLVED: that the above budget increases of \$1,730.74 for Fiscal Year 2003-04 and \$26,820.00 for Fiscal Year 2004-05 be funded by surplus monies existing in the General Purpose Fund.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-
ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

25-2
SPECIAL
CRA/COUNCIL
JUN 29 2004