

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

PUBLIC MEMORANDUM

TO: Council President Fortunato Bas and Members of the Council

FROM: Ryan Richardson, Special Counsel

CC: City Administrator, Ed Reiskin
Director of Human Resources, Ian Appleyard

DATE: May 2, 2022

RE: Council's Authority to Increase the City Attorney's Salary
(Item 6 on the May 9, 2022 Finance and Management Committee Agenda)

I. INTRODUCTION

On May 9, the Finance and Management Committee will consider a report from the City Administrator recommending and requesting that the Council increase the City Attorney's salary to the top of the permissible salary range prescribed by City Charter section 401(1) and amend the Salary Ordinance to reflect the salary increase. (Item No. 6).

President pro tempore Sheng Thao requested that the City Attorney's Office provide a memorandum describing the Council's authority to raise the City Attorney's salary. This legal opinion advises the Council of its authority to raise the City Attorney's salary.

Consistent with our office's past practice, this opinion will be made public because it interprets the City Charter and the powers of the City Council. Like all public opinions, it will be posted on the City Attorney's web site at <https://www.oaklandcityattorney.org/Ops-Reps/Opinions.html>. Consistent with Section 2.20.080 of the Oakland Municipal Code, it will also be submitted to the Clerk's office for inclusion in the supplemental agenda packet for Finance and Management Committee's meeting on May 9, 2022.

II. QUESTION AND BRIEF ANSWER

Question:

What is the Council's authority to increase the City Attorney's salary?

Brief Answer:

The City Charter grants the Council the authority to set the City Attorney's salary within the salary range prescribed by the formula outlined in the Charter. (Charter section 401(1).) The Council, therefore, is authorized to increase the City Attorney's salary if it is not at the top of the salary range permitted by Charter section 401(1).

The City Administrator's report regarding Item 6 on the May 9th Finance and Management Committee meeting agenda calculates the permissible salary range for the City Attorney under the Charter, identifies the City Attorney's current salary (which is not at the top of the salary range), and recommends that the Council increase the City Attorney's salary to the top of the range.

III. ANALYSIS

The Council is the City's governing body and is "vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government . . ." (Charter section 207.) The Charter further provides that the Council "shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter." (Charter section 207.) The City Attorney is a City officer. (Charter section 400.) Charter section 207 thus authorizes and requires the Council to fix the compensation of the City Attorney, without any limitations on the salary amount unless another provision of the Charter provides otherwise.

Charter section 401(1) limits the Council's discretion regarding setting the salary of the elected City Attorney by setting both upper and lower limits, providing as follows:

"The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and 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."

The City Administrator reports that the City Attorney's current salary is below the upper limit. Charter section 401(1) accordingly authorizes the Council to increase the City Attorney's salary, up to the top of the permissible salary range, in accordance with the City Administrator's analysis and recommendation.

Respectfully submitted,



RYAN RICHARDSON
Special Counsel