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CITY OF OAKLAND



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July 17, 2012

Honorable City Council
Oakland, California

Re: July 17, 2012 Resolution Irrevocably Waiving for Fiscal Year 2012-2013 the Public Ethics Commission-Approved 2.1% Increase in the Salary for the Office of Councilmember

Dear President Reid and Members of the Council:


At the Council's June 18, 2012 special budget meeting, the council unanimously passed a motion (moved by Schaaf, seconded by Kemighan) (1) scheduling a resolution declining the council salary increases that city charter section 202 (C) requires the Public Ethics Commission to authorize each year for the office of city council member and (2) requesting that the city attorney's office prepare the resolution for council's consideration.

We prepared a resolution for the June 28th Special Council Budget meeting pursuant to the Council's request to decline the Public Ethics approved salary increase for Fiscal Year 2012-2013. At the June 28th Special Meeting the Council indicated that rather than decline the salary increase, it wished to direct to the City Administrator to refrain from implementing the increase during Fiscal Year 2012-2013. The City Administrator's Office indicated that federal law requires an irrevocably, written waiver of the salary increase to authorize the City to withhold the salary increase during Fiscal Year 2012-2013. Hence, the council further directed that the resolution be continued to the regular July 3 Council meeting, indicating that they wanted to have the revised language before them prior to voting.

A revised resolution has been prepared and will be scheduled instead for the July 17th meeting. First, the Sunshine Ordinance, which sets forth grounds for submitting new items to the Supplemental Agenda, does not authorize inclusion of a resolution in the 72 hour agenda that did not appear on the 10-day agenda unless the matter is urgent. This matter is not urgent as the Council increase has not yet been programmed into the payroll system and staff is on notice to hold off on such programming until the Council votes on the irrevocable waiver. Second, the July 3rd Supplemental Agenda was sent to print during the June 28th Special Council meeting. Therefore, City Attorney's Office and staff were provided no time to revise legislation for the July 3rd agenda packet.

A vote in favor of the resolution will authorize the City Administrator to refrain from granting the increase during Fiscal Year 2012-2013. Any council member who votes no, abstains or is absent at the time the vote is taken will receive the charter-mandated salary increase unless and until he/she provides a writing to the City administrator irrevocably waiving the salary increase during Fiscal Year 2012-2013.

Sincerely,

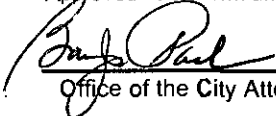


Barbara J. Parker
City Attorney

Attachment

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Approved as to Form and Legality


Office of the City Attorney

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION IRREVOCABLY WAIVING PAYMENT OF THE PUBLIC ETHICS COMMISSION-APPROVED 2.1% INCREASE IN THE SALARY FOR THE OFFICE OF COUNCILMEMBER FOR FISCAL YEAR 2012-2013

Whereas, City Charter section 202(C) mandates that the Public Ethics Commission annually adjust the salary for the Office of Councilmember by the increase in the consumer price index over the preceding year; and

Whereas, City Charter section 202 (C) further authorizes the Public Ethics Commission to increase salaries beyond the increase in the consumer price index up to a total of five percent; and

Whereas, in accordance with its powers and duties under the City Charter, the Public Ethics Commission has increased the salary for the Office of Councilmember by 2.1% effective the first payroll period of Fiscal Year 2012-2013; and

Whereas, in light of the City Charter mandate, each Councilmember will receive the 2.1% salary increase unless he/she advises the City Administrator that he/she declines to accept or irrevocably waives the increase; and

Whereas, in light of the City Charter mandate, the Council as a body cannot by motion, resolution or ordinance compel individual Councilmembers to decline the salary increase; and

Whereas, given the economic downturn, and recession that have caused significant budget deficits for the City of Oakland over the past several years, requiring layoffs, reductions in compensation for City employees, cuts in programs and services and City shutdown days to balance the budget, a number of City Councilmembers have expressed their desire to waive payment of the 2.1% salary increase for Fiscal Year 2012-2013 and the City Council believes it is in the best interest of the City for Councilmembers to waive said salary increase for Fiscal Year 2012-2013; and

Whereas, to authorize their employer, City of Oakland, to refrain from paying the salary increase for the next fiscal year once the salary base is adjusted, Councilmembers must irrevocably waive, in writing, the increase for Fiscal Year 2012-2013; now, therefore be it

RESOLVED: That the City Council finds and determines as a matter of policy that it is in the best interest of the City for Councilmembers to irrevocably waive payment for Fiscal Year 2012-2013 the 2.1% of the salary increase that the Public Ethics Commission approved to take effect the first payroll period of Fiscal Year 2012-2013; and be it

FURTHER RESOLVED: That each Councilmember who votes in favor of this resolution by virtue of his/her affirmative vote hereby gives notice to the City Administrator of his/her decision to irrevocably waive said 2.1% salary increase solely for Fiscal Year 2012-2013; and be it

FURTHER RESOLVED: That in accordance with City Charter section 202(C), that each Councilmember who votes against the resolution shall receive payment of the 2.1% salary increase that the Public Ethics Commission approved in Fiscal Year 2012-2013 unless and until such Councilmember submits an irrevocable waiver of payment in writing to the City Administrator for the 2.1% salary increase; and be it

FURTHER RESOLVED: That any Councilmember who is absent or who abstains from voting on this Resolution shall receive payment of the 2.1% salary increase in Fiscal Year 2012-2013 unless and until such Councilmember submits an irrevocable waiver in writing to the City Administrator waiving payment of the 2.1% salary increase in Fiscal Year 2012-2013.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and
PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California