



Item 5 - Staff Memorandum with Measure X text

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Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Ana Lara-Franco, Commission Analyst
Suzanne Doran, Acting Executive Director
DATE: March 30, 2023
RE: City Attorney Salary Adjustment as Required by Oakland City Charter Section 401(1)

In November 2022, Oakland voters passed Measure X, which amended Oakland City Charter Section 401(1) to add setting the City Attorney salary level to the duties of the Public Ethics Commission (PEC or Commission). This memorandum provides background information for the Commission to adjust the City Attorney salary per the criteria specified by City Charter Section 401(1).

Background

The City Attorney is the department head for the Office of the City Attorney, oversees a staff of 79 FTE positions, and serves as counsel to the Mayor, City Council, and every department of the City, except departments designated as independent departments in the Charter.

In November 2012, November 2016, and November 2020, the voters elected the current City Attorney to serve full, four-year terms. **The City Attorney's current annual salary is \$243,618.72.** The most recent salary increase was in April 2022.

In 1998 the Oakland electorate voted to amend the Oakland City Charter and, among other things, to establish an elected City Attorney. A subsequent Charter amendment granted the Council authority to set the City Attorney's salary and established a formula to determine the range for the salary: 70 percent to 90 percent 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."

In November 2022, Oakland voters passed Measure X, which amended process for setting the City Attorney's salary as follows:

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. (Oakland City Charter Section 401(1))

Analysis

Since the most recent salary increase, the City has negotiated wage increases through the collective bargaining process. The non-public safety wage increases, as opposed to Police and Fire wage

increases, can be a consideration in establishing the new wage since it applies to both City Attorney employees and to other Department Heads. The Department Heads received the same wage increase through Salary Ordinance 12187 C.M.S. section 2.20, which allows the City Administrator to provide the same negotiated wage increases to unrepresented employees.

The annual salary for the Assistant City Attorneys is currently **\$260,437.44**, which exceeds the City Attorney’s annual salary **by \$16,818.72** per year.¹ The City’s compensation practice is to have a minimum of 15 to 20 percent salary differential between a department head and their highest paid direct reporting employee. For the City Attorney salary to be 15 to 20 percent above the salary of the highest direct reporting employee would be a salary between **\$299,503.06 and \$312,524.93**

In accordance with the criteria establishing the permissible salary range for the City Attorney in Charter Section 401(1), salaries for other City department heads were surveyed (see Table 1 below).

Table 1: City Department Head Salaries

Dept Head	Annual Salary
City Auditor	181,203.12
City Clerk	192,409.08
EEO & Civil Rights Director	211,293.60
Executive Director of CPRA	218,656.00
Director of Race and Equity	218,657.52
Director of Housing & Community Dev	235,620.00
Director of Human Services	235,620.00
Director of Parks & Recreation	235,620.00
Director of Planning & Building	247,390.44
Director of Workplace & Employment Stnd	247,390.44
Chief of Violence Prevention	247,390.56
Director of Animal Services	247,390.56
Director of Economic & Workforce Dev	247,390.56
Director of Human Resources Managemen	247,390.56
Director of Information Technology	247,390.56
Director of Library Services	247,390.56
Director of Transportation	247,390.56
Director of Finance	261,075.84
Director of Public Works	286,897.20
Average Salary (excluding City Attorney)	237,029.85
City Attorney	243,618.72

Based on the above data, the salary range for the Oakland Department Heads is from **\$181,203.12 to \$286,897.20**. The average annual salary for Department heads is **\$237,029.85** per year while the annual salary for the City Attorney is **\$243,618.72**.

In accordance with the criteria establishing the permissible salary range for the City Attorney in Charter Section 401(1), salaries of City Attorney’s from other California cities within the three immediate higher

¹ Salary data provided by Anjali Saxena, Payroll Manager, Finance Department. January 17, 2023

and lower populations compared to Oakland were surveyed (see **Table 2**).

Table 2: California Cities City Attorney Salaries

City	Population*	Salary
Fresno	543,660	232,463.00
Sacramento**	518,037	331,941.00
Long Beach	460,682	318,972.00
Bakersfield	408,865	214,601.88
Anaheim**	341,245	317,407.00
Riverside	317,847	315,312.00
Average Salary		288,449.48
Oakland	424,464	243,618.72

*<https://publicpay.ca.gov/>

**maximum salary recorded. All other salaries are actual salary of the sitting City Attorney.

The above chart shows that most of the City Attorney salaries in California cities of comparable size are higher than Oakland’s current salary rate. The average annual salary is **\$288,449.48** per year while the current annual salary for the City Attorney is **\$243,618.72** (84 percent of the average salary).

In addition, the survey of the salaries of City Attorneys in the Bay Area reflects that the Oakland City Attorney’s salary is significantly lower as shown in **Table 3** below.

Table 3: California Bay Area Cities City Attorney Salaries

City	Salary*
City of Oakland - City Attorney	243,618.72
City of Hayward - City Attorney	239,450.00
City of Berkeley - City Attorney	253,770.00
City of Mountain View - City Attorney	283,984.56
City of Alameda - City Attorney**	290,320.00
City and County of San Francisco - City Attorney	294,736.00
Port Attorney - Port Attorney	320,000.00
Alameda County - County Counsel	332,901.00
City of San Jose - City Attorney	334,335.00
City of Santa Clara - City Attorney	345,000.00
City of Fremont - City Attorney	309,750.00
Average survey Salary (excluding Oakland's)	300,424.66
* https://publicpay.ca.gov/	
**Actual salary	

The above data shows that most of the Bay Area City Attorney salaries are higher than Oakland’s current salary rate. The average annual salary is **\$300,424.66** per year while the current annual salary for the City Attorney is **\$243,618.72** (80 percent of the average salary).

Recommendation

Based on the above data, which relies on the criteria set forth in City Charter Section 401(1), an adjustment to an annual salary of **\$306,990.63** is recommended as it provides equity and alignment of the City Attorney’s salary by adding a 15 percent differential above the highest paid subordinate attorneys and staff in the Office, is comparable to salaries of attorneys in other Bay Area cities, and accounts for the scheduled 2.5 percent negotiated wage increase for other City employees effective July 2023.²

Table 4: Comparison Summary

City Department Head - Average	\$	237,029.85
Highest Paid Employee - Salary	\$	260,437.44
Comparable-size California Cities - Average	\$	288,449.48
Bay Area Cities - Average	\$	300,424.66
Oakland City Attorney - Current	\$	243,618.72
Oakland City Attorney - Recommended Adjustment	\$	306,990.63

Scheduled wage increases under the current collective bargaining agreements with non-public safety represented employees include 2.5 percent on July 2023, 2.5 percent January 2024, 2 percent July 2024, and 2 percent March 2025. Staff recommends the Commission accounts for future increases, excluding the 2.5 percent July 2023 increase, in the annual adjustment of the City Attorney’s salary.

Following the Commission’s determination of the adjustment amount, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

² Salary adjustment calculated as follows: Highest paid City Attorney office employee salary + 15% differential + 2.5% increase to maintain parity with scheduled wage increase for non-public safety employees effective 7/1/23.

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OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 12 PM 1:51

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89317 C.M.S.

**INTRODUCED BY COUNCILMEMBERS DAN KALB, LOREN TAYLOR,
SHENG THAO, AND NIKKI FORTUNATO BAS**

**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING
TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION A GOVERNMENT REFORM MEASURE THAT
WOULD AMEND THE CITY CHARTER TO, AMONG OTHER THINGS:**

- (1) ESTABLISH TERM LIMITS FOR COUNCILMEMBERS;**
- (2) REQUIRE A MINIMUM OF TWO COUNCIL HEARINGS BEFORE
CERTAIN COUNCIL PROPOSED BALLOT MEASURES ARE
APPROVED FOR PLACEMENT ON THE BALLOT;**
- (3) COUNT COUNCILMEMBER ABSTENTIONS AND ABSENCES AS
A NO VOTE ON COUNCIL MOTIONS, RESOLUTIONS AND
ORDINANCES FOR PURPOSES OF DETERMINING WHETHER
MAYOR HAS AUTHORITY TO CAST A TIE-BREAKING VOTE;**
- (4) CHANGE THE FORMULA FOR THE PUBLIC ETHICS
COMMISSION TO SET COUNCILMEMBER SALARIES AND
AUTHORIZING THE PUBLIC ETHICS COMMISSION TO SET THE
SALARIES OF THE CITY AUDITOR AND CITY ATTORNEY;**
- (5) ADD AND CLARIFY DUTIES OF AND PROVIDE MINIMUM
STAFFING FOR THE CITY AUDITOR; AND**

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION
OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION,
AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO
PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION**

WHEREAS, in 1968, the People adopted the Charter of the City of Oakland ("City Charter"), establishing the fundamental law of the City, including but not limited to, the City's form of government and the role of City Council, the Mayor, the City Manager, and other City officers, and

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WHEREAS, since then, the City has grown in size, complexity, and diversity; and

WHEREAS, a city's charter must promote democracy, accountability, transparency, and equity; and

WHEREAS, according to the National League of Cities, 80% of American cities have term limits for mayors and/or councilmembers; and

WHEREAS, a 2021 report by San Francisco Bay Area Planning and Urban Research Association, a nonprofit public policy organization ("SPUR") titled "Making Government Work: 10 ways City Governance Can Adapt to Meet the Needs of Oaklanders" called for term limits City Councilmembers and additional staffing for the City Auditor; and

WHEREAS, Oakland elected officials such as City Councilmembers, the City Auditor, and the City Attorney have lower salaries than several nearby California cities; and

WHEREAS, engaged residents may be more likely to be able to gain election to local office when there is an open seat as opposed to when an incumbent is running for re-election; and

WHEREAS, having two Council hearings on certain Council proposed ballot measures before the Council places such measures on the ballot will expand opportunities for public and Council engagement, discussion and vetting; and

WHEREAS, the Charter currently entitles the Mayor to cast a tie-breaking vote when the Council is evenly divided on a Council vote, yet that has been thwarted by Councilmembers abstaining; now therefore be it

RESOLVED: That the City Council finds and determines the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed amended Charter amendment text shall be as follows:

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but ~~he~~ shall have a vote on the Council if the Councilmembers are evenly divided in accordance with Section 305. The Council shall elect a President of the Council from among its members for a term of two years. The President of the Council shall serve as the presiding officer of the City Council and shall perform duties authorized by the Council's Rules of Procedure, which shall be passed by resolution in accordance with Charter section 210.

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Section 202. Council Salaries. The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year. ~~The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.~~

Section 204. Term of Office, Term Limits, Council.

Term of Office. The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January ~~1~~² following their election. ~~The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993.~~ In 1990-2018 Municipal Elections ~~were~~^{will be} held to select City officers for four-year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992-2020 Municipal Elections ~~will be~~^{were} held to select City Councilmembers for four-year terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember At-Large.

Term Limits. No person shall be elected to the office of Councilmember, whether district or at-large, or any combination thereof, for more than three consecutive terms; except that a person may serve up to three consecutive terms as a district Councilmember immediately followed by up to three consecutive terms as Councilmember at-large. For purposes of determining term limits, a Councilmember who fills a partial term of more than two years shall be deemed to have filled the entire term. Terms for the office of Councilmember that commenced prior to January 2023 shall not be considered in calculating limits on consecutive terms for Councilmembers.

Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to ~~60~~⁹⁰ days may be allowed only for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. ~~If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible.~~ Special elections for the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds ~~120~~¹⁰⁰ days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee ~~is~~^{may not} simultaneously fill the vacancy and run as a candidate for that the office which created the vacancy and provided the appointment does not exceed ~~128~~¹⁸⁰ days or go beyond the date the

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new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor Council President fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the Vice Mayor Council President shall be entitled to return to his/her/their seat.

Section 208. Meetings of the Council. At 11:00 a.m. on the first Monday following January 21 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each odd-numbered year, the Council shall, by resolution, elect a Vice Mayor Council President from among its members to serve for a one two-year term. The Council also shall elect, by resolution, a President Pro Tempore of the Council from among its members to serve a one or two-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

Section 221. Hearings Required for Certain Ballot Measures Proposed by the Council. Before taking a vote, the Council shall notice and consider at no fewer than two Council open session meetings that are at least 10 calendar days apart, any (1) general obligation bond, (2) new parcel tax or increase in a parcel tax, or (3) Charter amendment that the Council proposes to place on the ballot.

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice Mayor President of the Council. Except as otherwise provided in this Section, when the Vice Mayor President of the Council assumes the office of Mayor upon declaration of a vacancy, they shall serve for the remainder of the unexpired term if such term is less than one year; otherwise they shall serve until the vacancy is filled as provided herein. The President Pro Tempore shall perform the duties and shall have the powers of the President of the Council during any time that the President of the Council has assumed the office of the Mayor. Whenever the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor President of the Council notifies the Council in writing that they do not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the Council; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to 60-90 days may be allowed only for the express purpose of consolidating the special election with the

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next Municipal Election or Statewide Election. Special elections for the office of Mayor that take place after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting, and extended voting period.

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

(a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.

(b) Recommend to the Council such measures and legislation as ~~he~~ the Mayor deems necessary and to make such other recommendations to the Council concerning the affairs of the City as ~~he~~ the Mayor finds desirable are in the best interest of the residents of the City.

(c) Encourage programs for the physical, economic, social and cultural development of the City.

(d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.

(e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.

(f) Serve as ceremonial head of the City.

(g) Represent the City in inter-governmental relations as directed by the Council.

(h) Provide community leadership.

(i) May cast a tie-breaking vote on any Ordinance, Resolution or Motion voted on by the Council, if the Council's vote is evenly divided. Solely for the purposes of determining whether the Mayor is eligible to cast a tie-breaking vote, abstentions and absences shall count as a "No" vote. A legally-required recusal shall not count as a "No" vote.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as the Mayor ~~he/she~~ may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be

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noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote ~~his~~ their full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which ~~he~~ the Mayor is not actively engaged and which are not in conflict with the performance of ~~his~~ the Mayor's duties and responsibilities.

Section 306. Duties of ~~Vice Mayor~~ Council President. In addition to any duties specified by ordinance or by the Council's Rules of Procedure Resolution passed in accordance with Charter section 210, ~~in the absence~~ during the unavailability or temporary disability of the Mayor, the ~~Vice Mayor~~ President of the Council shall perform the duties of the office of Mayor.

Section 401(1). City Attorney. 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 annually 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 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.~~

Section 401(7). Endorsements, Campaigns, Campaign Contributions. During the City Attorney's tenure, the City Attorney shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Attorney, or of a City ballot measure, or be an officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible ~~to~~ for the office a person must be a qualified elector of the State of California, a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the office ~~shall be set by the Public Ethics Commission, which shall be not less than 70% nor~~

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more than 90% of the average salaries of City Auditors 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 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. 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.

Section 403(2). Vacancy, What Constitutes. The Office of City Auditor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after their term is to begin, dies, resigns, ceases to be a resident of the City or is absent from the City for a period of more than sixty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of the office, forfeits the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Auditor. Filing to run for the office of Mayor, Councilmember or City Attorney shall constitute a resignation from the office of City Auditor, effective on the date of filing.

Section 403(3) Vacancy, Filling of. For all vacancies occurring in the Office of City Auditor the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter.

Section 403(4) Powers of the City Auditor. The City Auditor, notwithstanding any other provision of this Charter, shall have the power and it shall be his or her the City Auditor's duty to audit the books, accounts, money and securities of all bureaus, departments, offices, agencies, including the Port Department, boards, commissions, and programs of the City, and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct audits in accordance with Government Auditing Standards as issued by the U.S. Comptroller General.

The City Auditor shall conduct surveys, reviews, and performance audits and financial audits as the Auditor deems to be in the best public interest or as required-requested by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

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- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to Council and Mayor requests for audits and reviews.
- (8) Submitting, at a public meeting of the full City Council, a ~~quarterly~~ semi-annual report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's reports.
- (9) ~~The City Auditor shall conduct~~ Conducting periodic performance audits of each department as specified in the City budget in order to help improve government performance.
- (10) Reviewing City departments, offices, agencies, boards, commissions, and bureaus to analyze if they are managing, safeguarding and using public resources, including public funds, personnel, property, equipment and space, economically, efficiently, equitably, and effectively.
- (11) Analyzing City programs, activities, services, functions, or policies as to effectiveness and cost-effectiveness, including the identification of any causes of inefficiencies.
- (12) Reviewing and recommending to the City Administrator management adjustments in operating and administrative procedures and practices, systems and accounting internal control systems and internal management controls.
- (13) Analyzing allegations of fraud, waste, abuse or illegal acts that require further investigation to substantiate.
- (14) Publishing an annual report summarizing recent audits and recommendations.
- (15) Responding to requests from the City Administrator to provide recommendations on how to make City departments and services more effective and customer-service oriented.
- (16) Preparing an annual workplan including planned audits for the year. The City Auditor shall publish such workplan in August of each year.

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The City Auditor shall have access to inspect all records, property, equipment, and facilities within the City's jurisdiction.

Effective July 2023, the budget for the Office of the City Auditor shall be sufficient to hire at least fourteen full-time equivalent ("FTE") employees of relevant classifications. The minimum staffing budget set-aside may be suspended, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution or ordinance.

Restrictions on Running for Public Office. Filing for an elective office over which the City Auditor has audit jurisdiction will be the same as resignation, effective on the date of filing.

Endorsements, Campaigns, Campaign Contributions. During the City Auditor's tenure, the City Auditor shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Auditor, or of a City ballot measure, or be an, officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

Section 601. Boards and Commissions. The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction, meeting frequency, standards for conducting long-term planning, and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article.

Section 601(a). Except as otherwise provided for in this Charter, Mmembers of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's prior term of office.

Section 601(b). Notwithstanding any other language in this section 601, or elsewhere in the Charter, for vacancies on boards and commissions for which an ordinance specifies that Councilmembers may nominate a candidate for the Mayor's consideration, the designated Councilmember shall have 45 days from the date the vacancy occurs to recommend one or more

Item 5 - Staff Memorandum with Measure X text

nominees to the Mayor in writing. Upon such nomination or the expiration of the 45-day nomination period, whichever occurs first, the Mayor shall have 90 days thereafter to submit any eligible candidate for the Council’s confirmation.

If the Mayor does not submit for confirmation a candidate to fill a vacancy within the time frames prescribed by this section 601(b), the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill the vacancy within the time frame specified in this section 601(b) and the Council does not confirm the candidate, the time frame specified in this section 601(b) shall commence anew.

For purposes of this Section 601, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's term of office.

Section 1100. Nominating Election. Except as otherwise provided for in section 1105 of this Charter, Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in June in each even-numbered year. In order to consolidate Municipal Nominating Elections with Statewide Primary Elections, the Council may by ordinance provide for a date for a Municipal Nominating Election which conforms to the date of a Statewide Primary Election.

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE ___

<p>Measure __. Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?</p>	Yes	
	No	

; and be it

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FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland ("City Clerk"), at least 88 days prior to the November 8, 2022 general municipal election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUL 11 2022

PASSED BY THE FOLLOWING VOTE:

AYES - ~~WALSH, CLARK, WOOD~~, KALB, ~~WALSH~~, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS -5

NOES - File - 1

ABSENT -

ABSTENTION -

Excused - Grillo, Kaplan - 2

ATTEST:



ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

22 JUL 28 PM 4:27

QUESTION

Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?

TITLE AND SUMMARY

Title: A proposed amendment to the Charter to establish term limits for members of the City Council (“Council”), require two Council hearings for certain proposed ballot measures, count Councilmember abstentions and absences as “no” votes in determining whether the Mayor may cast a tie-breaking vote at the Council, provide the Public Ethics Commission (“Commission”) discretion in setting Councilmember salaries, authorize the Commission to set the salaries of the City Auditor and the City Attorney, clarify and add to the duties of the City Auditor, and set minimum staffing for the Office of the City Auditor.

Summary:

This measure makes a number of changes to the Charter including:

Councilmember Term Limits

Members of the Council are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms.

Hearings on Proposed Ballot Measures

State law requires the Council to hold one public hearing before voting to place a measure on the ballot. This measure would require the Council to hold two public hearings before voting to place a general obligation bond, parcel tax, or Charter amendment on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts Councilmember salaries every two years based on any increases in the consumer price index (“CPI”). The Commission may also adjust their salaries above CPI increases, up to a total of five percent per year. This measure provides that the Commission would adjust the salaries every two years based on CPI increases, up to a total of five percent. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor using a specified formula. This measure provides that the Commission would set these salaries based on salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

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City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective office or of a City ballot measure.

City Auditor

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing for the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees.

/s/ DAVID CHIU
San Francisco City Attorney

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

IMPARTIAL ANALYSIS

22 JUL 28 PM 4:27

Councilmember Term Limits

Members of the City Council ("Council") are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms, except that a district Councilmember may serve up to three consecutive terms followed by up to three consecutive terms as an at-large Councilmember. Councilmember terms that began before January 2023 shall not count towards the term limits.

Hearings on Proposed Ballot Measures

State law requires the Council to hold at least one public hearing before placing a measure on the ballot. This measure would require the Council to hold at least two public hearings at least 10 calendar days apart before placing general obligation bonds, parcel taxes, or Charter amendments on the ballot.

Councilmember Salaries

The Public Ethics Commission ("Commission") adjusts the salary for Councilmembers every two years based on the increase in the consumer price index ("CPI"). The Commission may adjust salaries beyond the increase in CPI up to five percent per year. The voters may approve increases above five percent in a year. This measure provides that the Commission adjusts the salaries every two years based on CPI increases, up to a total of five percent for the two years. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year. The measure removes the ability of the voters to approve increases above five percent by ordinance.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember's abstention or absence shall count as a "no" vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor. This measure provides that the Commission would set these salaries based on the salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective officer, or of a City ballot measure.

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City Auditor

This measure specifies when the Office of City Auditor becomes vacant and a process for filling the vacancy.

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing in the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees, unless the Council determines for a given fiscal year or two-year budget cycle that the City is facing an extreme fiscal necessity.

/s/ DAVID CHIU
San Francisco City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND
22 JUL 29 AM 11:38

BERKELEY CITY AUDITOR’S IMPARTIAL FINANCIAL ANALYSIS OF THE GOOD GOVERNANCE CHARTER REFORM BALLOT MEASURE

If passed by more than fifty percent of the voters, the Measure would amend the City Charter to establish term limits for councilmembers, require a minimum of two council hearings before certain council-proposed ballot measures for placement on the ballot, and count councilmember abstentions and absences as a no vote on council motions, resolutions, and ordinances to determine whether the Mayor is eligible to cast a tie-breaking vote. Further, the Measure would change the formula for the Public Ethics Commission (PEC) to set councilmember salaries, authorize the PEC to set the salaries of the City Auditor and City Attorney, and clarify the duties of and provide minimum staffing for the City Auditor.

Financial Impact

This Measure will cost the City an estimated additional \$858,199 annually in staffing costs, as detailed in the tables below.

The staffing level in the Auditor’s office will increase from 11 Full Time Employees (FTEs) to a minimum staffing level of 14 FTEs, effective July 2023. City Council may suspend the minimum staffing level for a fiscal year or two-year budget cycle, in the event of extreme fiscal necessity.

Cost Component	Current FY 2023 Budget (11 FTEs)	Estimated Additional Annual Cost (+3 FTEs)^A
Staffing	\$2,568,489	\$638,229

^A Estimate is based on FY 2023 staff salaries and benefit rates.

The measure will authorize the PEC to set the salary of the City Attorney and the City Auditor annually. These salaries may not be reduced during their terms of office, except as part of a general reduction of salaries for all officers and employees. The estimated additional annual costs in the table below are based on an assessment of salaries within both departments, salaries of department heads within the City of Oakland, and salaries of comparable positions in California cities.

Cost Component	Current FY 2023 Salary and Benefits	Estimated Additional Annual Costs (Salary and Benefits)
City Attorney	\$420,637	\$120,145
City Auditor	\$332,471	\$99,826

Limits to this financial analysis are noted below:

- Staff salaries and benefit rates may increase over time which would increase the cost to the City.
- The PEC is authorized to set the salaries for the City Auditor and the City Attorney. As such, the PEC’s methodology may vary from our estimates.
- Should a vacancy occur in the Office of the City Auditor at a time that cannot be consolidated with a municipal or statewide election, a special election may be held. As of July 2022, the County of Alameda Registrar of Voters’ costs for special elections range from \$9 to \$11 per registered voter for vote-by-mail to \$19 to \$21 per registered voter for in-person voting.

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Our independent analysis represents the best information available at the time. Actual costs may vary from these estimates.

s/JENNY WONG
Berkeley City Auditor

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 23-04
[Proposed 4-12-23]

By action of the Oakland Public Ethics Commission:

WHEREAS, Oakland City Charter section 401(1) provides: “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.”; and

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, Ordinance No. 12187 C.M.S., the “Salary Ordinance,” sets forth a salary schedule reflecting all classifications of employment within the City including those of city employees and city officers; and

WHEREAS, a salary adjustment to \$306,990.63 would provide equity and alignment of the City Attorney’s salary with a 15 percent minimum differential above subordinate attorneys and staff in the Office and is comparable with the salaries of attorneys in other Bay Area cities and also accounts for the scheduled 2.5 percent negotiated wage increase for other City employees effective July 2023.

Now, therefore be it:

RESOLVED, that the Commission does hereby authorize an annual salary of \$306,990.63 for the office of City Attorney as mandated by City Charter Section 401(1), effective as of the first payroll period of Fiscal Year 2023-2024; and

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 held on April 12, 2023, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Suzanne Doran, Acting Executive Director
Oakland Public Ethics Commission

Date