



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Ian Appleyard
HRM Director

SUBJECT: Amendment to Ordinance No. 12187
C.M.S. (The Salary Ordinance)

DATE: April 11, 2022

City Administrator Approval 

Date: Apr 26, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending The Salary Schedule Of Ordinance No. 12187 C.M.S. (“Salary Ordinance”) To Increase The Salary For City Attorney.

EXECUTIVE SUMMARY

Staff requests approval to amend the Salary Schedule of the Salary Ordinance to increase the salary for the City Attorney. The Human Resources Management (HRM) Department recommends the proposed salary increase to provide for more equitable alignment with the salary of the City Attorney and subordinate attorneys in the office of the City Attorney. Notably, if City Council increases the City Attorney’s salary to the maximum permitted under the formula set forth in City Charter section 401(1), in accordance with HRMs recommendation, the City Attorney nevertheless will continue to be paid less than subordinate attorneys in the office.

As a result of the above compensation increases, the annual salary for the Assistant City Attorneys in the Office of the City Attorney is currently \$248,035.68 (\$20,669.64 per month), which exceeds the City Attorney’s annual salary by \$18,780.96 per year. Labor agreements for employees under the City Attorney’s authority expire on June 30, 2022, and it is expected that additional wage increases will be provided, including but not limited to the Assistant City Attorney classification. Since the City Attorney salary is controlled by the Charter, as opposed to being negotiated, Council action is necessary. HRM recommends the annual salary is increased to \$243,618.61 annually. This will help to address the inequitable alignment of the salary of the City Attorney, who is the department head for the Office of the City Attorney, overseeing a staff of 81 FTE positions and providing critical advice and counsel, and to alleviate future salary compaction. As noted above, the City Attorney’s salary will nevertheless continue to be less than the current salary for the Assistant City Attorneys.

BACKGROUND / LEGISLATIVE HISTORY

In 1998 the Oakland electorate voted to amend the Oakland City Charter and, among other things, to establish an elected City Attorney. Prior to that amendment the City Charter provided for appointment of the City Attorney, the City Attorney served at the pleasure of the City Council

and the City Charter did not address the City Attorney's salary. The City Attorney's salary was set by ordinance and the City Attorney, like all other department heads accrued vacation and sick leave, and received management leave, and COLAs provided to attorneys in the Office and other City employees. 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. City Charter section 401(1) provides that the Council sets the City Attorney's salary and prescribes the following salary range: 70% to 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." ; Further, the Council cannot decrease the City Attorney's salary except as part of a general reduction of the salaries of all officers and employees.

In March 2000 the voters elected the first elected City Attorney. The first elected City Attorney was elected to second and third four-year terms in 2004 and 2008, respectively. On November 18, 2008, the City Council adopted Ordinance No. 12903 which provides that "[n]o elected official shall receive management leave, nor shall any elected official accrue sick leave or vacation after the effective date of this Ordinance."

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 \$229,254.72. The most recent salary increase was December 2018. Since that time, the City Council has increased salaries to department heads, attorneys and other employees in the Office of the City Attorney, and other city employees through negotiated wage increases pursuant to (1) labor agreements with represented employees; and (2) the related Salary Ordinance 12187 C.M.S. section 2.20 for unrepresented employees' compensation equal to the increases provided to represented employees' labor agreements.

During the City Attorney's tenure, the salaries of subordinate attorneys have increased and the Assistant City Attorney's salaries exceed the City Attorney's salary by \$18,780.96 annually. Additionally, it is expected that there will be additional general wage increases for all non-sworn City employees. Therefore, HRM recommends that the City Attorney's salary is amended to provide the salary of \$243,618.61 annually. This amount is within the City Charter's salary range formula. Notably, this salary which is the maximum salary permitted by Charter section 401(1) will nevertheless continue to be less than the current annual salary for the Assistant City Attorneys in the office.

ANALYSIS AND POLICY ALTERNATIVES

City Charter section 401(1) prescribes the formula to determine the range for the City Attorney's salary:

"The salary of the elected City Attorney shall be set by the Council, which shall be not less than 70% and nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and 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 reduction of salaries of all officers and employees or proportion."

In accordance with the formula for establishing the permissible salary range for the City Attorney, salaries of City Attorney’s from other California cities, within the three immediate higher and lower populations, compared to Oakland were surveyed in **Table 1**.

Table 1: California Cities City Attorney Salaries

City	Population*	Annual Salary
Fresno	526,147	\$227,000.00
Sacramento**	503,482	\$320,276.52
Long Beach	462,081	\$317,052.00
Bakersfield	379,879	\$206,348.52
Anaheim	353,085	\$283,447.00
Santa Ana***	332,610	\$270,000.00
Average Salary		\$270,687.34
70% of Average Salary		\$189,481.14
90% of Average Salary		\$243,618.61
Oakland	422,575	\$229,254.72

*www.california-demographics.com/cities_by_population 2020 data

**maximum salary recorded. Range: min \$174,871.33, max \$320,276.52; all other salaries are actual salary of the sitting City Attorney.

***City of Santa Ana contracts out services to Best Best Krieger LLP. Contract mandates \$22,500 per month.

Based on the above data and City Charter section 401(1) formula, the salary range for the Oakland City Attorney is \$189,481.14 to \$243,618.61. However, based on Charter section 401(1)’s prohibition against decreasing the City Attorney’s current salary of \$229,254.72 “except as part of a general reduction of salaries of all officers and employees in the same amount or proportion,” the Council may set the City Attorney’s salary within the range of the City Attorney’s current salary of \$229,254.72 and \$243,618.61. The above chart shows that nearly all of the City Attorney salaries in the permissible range prescribed by Charter are higher than Oakland’s current salary rate. Two salary rates are lower than the current City Attorney’s salary and four salary rates exceed the City Attorney’s annual salary by \$40,745.28 to \$91,021.80.

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 2**.

Table 2: California Bay Area Cities City Attorney Salaries

Agency	Salary*	Effective
City Fremont - City Attorney	\$302,672.71	1/1/2022
City of Santa Clara - City Attorney	\$332,796.00	4/5/2022
City and County of San Francisco - City Attorney	\$294,736.00	FY 2021-2022
Alameda County - General Counsel	\$263,203.00 - \$341,973.00	2/6/2022
City of San Jose - City Attorney	\$250,751.00 - \$337,653.00	2/20/2022

Agency	Salary*	Effective
City of Alameda - City Attorney	\$262,093.00	1/2/2022
City of Hayward - City Attorney	\$250,286.40	3/22/2022
City of Berkeley - City Attorney	\$289,681.60	7/25/2021
City of Mountain View - City Attorney	\$293,000.00	4/18/2022
Port of Oakland - Port Attorney	\$320,000.00	12/31/2021

*Based on public records

Bay Area City Attorney salaries are instructive because the cost of living in the Bay Area is higher than all the cities that are included in the Charter formula. Moreover, as we advised earlier in this report, the City Attorney currently earns \$18,780.96 annually less than the subordinate Assistant City Attorneys in the Office. This is not a proper or equitable alignment between a department head with the responsibility for overseeing the City's legal advice and counsel to the City and its leadership.

The recommended action to increase the salary for the City Attorney is in line with the Citywide priority #4 Responsive, trustworthy compliance. Trust and Compliance are prime components of this priority. Specifically, the City's compensation structure should maintain a fair and equitable distribution of salaries for classifications in the same series and for those in a reporting relationship; reasonable differentials in salary should ensure proper alignment with duties and responsibilities. Further, the City Council directs that elected officials be included in salary ordinance updates. Therefore, this recommendation will contribute to a more reasonable salary differential for the City Attorney position despite being lower than the maximum salary of the directly reporting positions.

FISCAL IMPACT

The fiscal impact will be \$14,363.88 per year in addition to an \$1,459 increase to fringe benefits, with \$1,084 going to retirement and \$375 going to other fringe benefits.

PUBLIC OUTREACH / INTEREST

No public outreach was deemed necessary other than the required posting on the City's website.

COORDINATION

Human Resources Management coordinated the preparation of this report with HRM, City Attorney's Office, and Finance Department Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Race & Equity: There are no social equity opportunities associated with this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends that the City Council Adopt: An Ordinance Amending The Salary Schedule Of Ordinance No. 12187 C.M.S. ("Salary Ordinance") To Increase The Salary For City Attorney.

For questions regarding this report, please contact Ian Appleyard, Director of Human Resources Management, at (510) 238-6450.

Respectfully submitted,



IAN APPLEYARD
Director, Human Resources Management

Attachments (1):

A: Salary Ordinance

