



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Ballot Measure Proposal to  
Amend Charter Section 407

**DATE:** August 1, 2006

### BACKGROUND

On June 20, 2006, the City Council approved the recommendation made by Mayor Gonzales and Councilmembers Pyle and Williams that a proposed City Charter amendment related to Council compensation and outside employment be prepared for Council consideration on its August 8, 2006 Agenda. Attached are a mark-up and a clean version of the proposed Charter Section 407 revisions which we believe reflect the Council direction.

Charter Section 407 currently provides that the Council Salary Setting Commission ("Commission") makes a **recommendation** to the City Council regarding the salary for members of the Council. The Commission is comprised of five (5) members, all residents of the City, appointed by the Civil Service Commission for a four (4) year term. The Commission makes biennial recommendations on the salaries for members of the Council. In making the recommendation, the Commission must account for the full-time nature of the office and set the salaries commensurate with salaries then being paid for other public or private positions with similar full-time duties, responsibilities and obligations.

Before making a recommendation, the Commission must conduct a public hearing. A recommendation to change the salary requires an affirmative vote from at least three (3) of the five (5) members. The Commission's failure to make a recommendation within the prescribed time period is deemed a recommendation that there be no salary change.

The Council has the discretion to adopt, by ordinance, the Commission's recommendation or a lesser amount. The salary setting ordinance sets forth the annual salary; retirement, medical, dental and life insurance benefits; and the automobile allowance for each member of the Council. The salary setting ordinance is subject to the referendum provisions of the Charter.

This memorandum provides an analysis of the proposed Charter amendment. The Charter defines a "member of the Council" as any one of the members of the Council, including the Mayor. This memorandum follows the Charter's definition.

## **ANALYSIS**

### **A. Ballot Measure Proposal**

The ballot measure proposal will be presented as one question that describes both of the proposed amendments to Charter Section 407. In order for the proposed amendment to pass, a majority of the electors must vote "Yes." It will not be possible for the electors to separately approve or disapprove the two aspects of the measure.

The wording of the proposed ballot measure is as follows:

#### **CITY CHARTER – COUNCIL COMPENSATION – OUTSIDE COMPENSATION PROHIBITION**

Shall Charter Section 407 be amended to:

Remove the City Council's discretion to reject the Salary Setting Commission's recommendation on the compensation for the members of the Council including the Mayor and instead vest the Commission with the authority to make the final determination; and

Prohibit members of the Council, including the Mayor, from receiving compensation for services rendered outside his or her duties of office?

### **B. Council Salary Setting**

The ballot measure proposal would amend Charter Section 407 to vest the Commission with the final authority to determine the compensation for members of the Council. The proposed amendment to Charter Section 407 would state that the duties of a member of the Council require a full-time commitment and require the Commission to determine the compensation for the members of the Council accordingly.

The proposed amendment would require that, before the Commission's determination, it conduct at least two public hearings. Failure of the Commission to adopt a resolution in any year within the time prescribed would result in no change to Council compensation. The Commission's resolution would be subject to the referendum provisions of the Charter and would take effect following the expiration of thirty (30) days from the date of its adoption for implementation on July 1 of that year.

## **C. Outside Compensation Restrictions**

### **1. Proposed Restrictions.**

In a June 16, 2006 memorandum, the Mayor and Councilmembers Williams and Pyle discussed that restricting a member of the Council's outside compensation would (a) limit the time spent by a member of the Council on activities so that more time could be expended on the performance of the member's duties of office; (b) limit the potential for financial conflicts of interest; and (c) dispel any perception that the members of the Council are not committing themselves full-time to their duties.

In the June 20, 2006 meeting, the City Council discussed that no member should be required to abandon his or her profession and that members of the Council may still practice a profession if they do not receive compensation. It was also noted, however, that if a person does not receive compensation from an outside activity, he or she may devote less time to the activity.

The ballot measure proposal would amend Charter Section 407 to prohibit a member of the Council from receiving compensation for services rendered outside his or her duties of office. The proposed amendment would not prohibit compensation for serving on an administrative or governing board of another government agency, district or special purpose entity if that service is part of his or her duties as a member of the Council.

The proposed amendment also would not prohibit a member of the Council from devoting time to activities outside of the office as long as he or she does not accept compensation for his or her services. For example, a member of the Council may continue to volunteer or engage in pro bono work. The proposed amendment was drafted to reflect the City Council discussion that members of the Council may wish to continue to practice their profession.

Nor would the proposed amendment prohibit a member of the Council from receiving income, such as dividends, interest, royalties and capital gains, from an interest in an investment or a business in which the member of the Council is not actively engaged. Thus, so long as a member of the Council is not receiving compensation for services rendered, under the proposed amendment he or she may still receive income from:

- Personal investments in securities;
- Real estate interests that do not require the member of the Council to render services; or
- Ownership interests in corporations, limited partnerships or other business enterprises which do not require the member of the Council to render services.

## **2. Other Jurisdictions.**

Our Office conducted a survey of several jurisdictions including San Francisco, Oakland, Sacramento, San Diego, Los Angeles, Santa Barbara, Fresno, and Bakersfield regarding restrictions on outside employment. Oakland, San Francisco, Los Angeles, and San Diego restricted outside employment for the mayor and/or councilmembers. The other four cities do not have any prohibitions.

- San Francisco's charter provides that the mayor is to devote his or her entire time to duties of office and no other occupation or business activity. (San Francisco Charter section 3.100). The members of the Board of Supervisors are not expressly prohibited from outside employment but it is noted in the San Francisco Charter that the position is full-time. (San Francisco Charter Section 2.100).
- Los Angeles's charter specifies that elected officials cannot receive compensation outside of the city for their services. (City of Los Angeles Charter Section 218 and Municipal Code Section 49.5.9).
- San Diego's charter requires the mayor and councilmembers to devote themselves full-time to the duties of their office and prohibits outside employment, trade, business or profession if it interferes with these duties. (City of San Diego Charter Article III(J)).
- Oakland's charter requires the mayor to devote full-time and attention to the duties of the office and prohibits outside employment. (City of Oakland Charter Article III, Section 305(h)). The mayor may still receive income from business or investment in which he or she is not actively engaged and which do not conflict with his or her duties. There are no restrictions on the councilmembers' ability to earn outside income.

In contrast to San Diego, the proposed revisions to Charter Section 407 prohibit a member of the Council from being compensated for services rendered outside his or her duties of office. San Diego's charter prohibits outside employment and other business interests *only if these would interfere with the duties of office*. This limitation would require a case-by-case analysis and could be difficult to enforce.

Similar to the proposed revisions to Charter Section 407, Oakland's charter prohibits the mayor from engaging in outside employment. However, the Oakland Charter permits the receipt of income by the mayor from a business or an investment so long as the mayor is not "actively engaged" and the particular business or investment does not conflict with the mayor's duties. Again, Oakland's restrictions would require a case-by-case analysis of whether the particular business or investment poses a conflict.

HONORABLE MAYOR AND CITY COUNCIL

August 1, 2006

**Subject: Ballot Measure Proposal**

Page 5

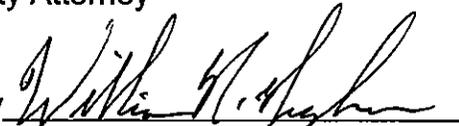
The proposed revisions to Charter Section 407 would be a prohibition on compensation received by a member of the Council for the rendering of services outside his or her duties of office. Income from investments or business would be permitted so long as the member did not also provide his or her services in connection with the business or investment. With respect to conflicts of interest, State law as well as the City's charter and municipal code provisions restricting participation in a matter in which a member of the Council has a financial interest would still apply.

## **CONCLUSION**

If approved by the Council, the ballot measure proposal would place on the November 7, 2007 election an amendment to Charter Section 407 to vest the Salary Setting Commission with the final authority to determine the compensation for member of the Council and to prohibit a member of the Council from receiving compensation for services rendered outside his or her duties of office.

RICHARD DOYLE

City Attorney

By 

WILLIAM H. HUGHES

Assistant City Attorney

Attachment

cc: Les White

## SECTION 407. The Council; Compensation.

- (a) ~~The compensation of Each member of the Council, including the Mayor, shall be paid as compensation for his or her services as a member of the Council, for each calendar month during which he or she is a shall be determined as follows:~~

~~Each member of the Council, a monthly salary which shall be paid compensation as determined and established by ordinance adopted pursuant to resolution of the Council Salary Setting Commission (the "Commission") and in accordance with the provisions hereinafter set forth in this Section. No salary compensation shall be established for any member of the Council, including the Mayor, except as provided in this Section.~~

~~Between March 1st and April 30th of every odd-numbered year, the Council Salary Setting Commission shall recommend to the Council adopt a written resolution determining and setting the amount of monthly salary which compensation that it deems appropriate for the members of the Council, including the Mayor, for the two-year period commencing July 1 of that odd-numbered year. If the Commission fails to adopt such a resolution within the specified time period, the then existing compensation shall continue unchanged for the two-year period commencing July 1.~~

~~The amount recommended determined and set for each member of the Council shall be the same, except that the amount recommended for the Mayor may exceed that of the other members of the Council. The monthly salary compensation shall be ~~in~~ an amount which that takes into account the full-time nature of the office ~~and which is~~. It also shall be commensurate with salaries the compensation then being paid for other public or private positions having similar full-time duties, responsibilities and obligations.~~

~~No recommendation shall be made except upon the Before the Commission adopts any such resolution, it shall conduct at least two public hearings on the matter. The Commission's resolution shall set forth the reasons for its determination and shall be adopted by the affirmative vote of at least three (3) members of the Commission. Failure of the Commission to make a recommendation in any year within the time prescribed shall be deemed to mean a recommendation that no change be made. The Commission's resolution shall be subject to the referendum provisions of this Charter and shall take effect following the expiration of thirty (30) days from the date of its adoption for implementation on July 1. The City Clerk shall transmit the Commission's resolution to the Mayor and each member of the Council and to the appropriate City officials for implementation.~~

~~Each biennial recommendation, together with the reasons therefor, shall be made in writing. Before it submits any such recommendation to the Council, the Commission shall conduct at least one public hearing on the matter. When such~~

~~a recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.~~

~~The Council shall, by ordinance, which shall be subject to the referendum provisions of this Charter, adopt the salaries as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.~~

~~No more than one salary setting ordinance shall be adopted on the basis of any biennial recommendation, provided that the Council may, at any time, by ordinance, reduce the salaries of the members of the Council, including the Mayor. In any salary setting ordinance adopted hereunder, the salaries for each member of the Council shall be the same, except that the salary of the Mayor may exceed that of the other members of the Council. Salaries established by ordinance adopted Compensation determined and set pursuant to the provisions of this Section shall remain in effect until ~~amended~~ changed by a subsequent ordinance resolution of the Commission adopted pursuant to the provisions of this Section.~~

For each member of the Council, except the Mayor, a sum, as established by the ~~Council Salary Setting~~ Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, ~~which that~~ he or she fails to attend in each such calendar month; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. No deduction shall be made from the ~~S~~salary of the Mayor because of his or her failure to attend any Council meeting.

- (b) The duties of a member of the Council require a full-time commitment and the Commission is charged with determining the compensation of the members of the Council accordingly. No member of the Council, including the Mayor, shall receive compensation for services rendered outside his or her duties as a member of the Council. This does not prohibit a member of the Council, including the Mayor, from receiving income from an interest in a business or in an investment in which he or she is not actively engaged.

**DRAFT**

**SECTION 407. The Council; Compensation.**

- (a) The compensation of each member of the Council, including the Mayor, for his or her services as a member of the Council, shall be determined as follows:

Each member of the Council shall be paid compensation as determined and established by resolution of the Council Salary Setting Commission (the "Commission") and in accordance with the provisions set forth in this Section. No compensation shall be established for any member of the Council, including the Mayor, except as provided in this Section.

Between March 1st and April 30th of every odd-numbered year, the Commission shall adopt a written resolution determining and setting the amount of compensation that it deems appropriate for the members of the Council, including the Mayor, for the two-year period commencing July 1 of that odd-numbered year. If the Commission fails to adopt such a resolution within the specified time period, the then existing compensation shall continue unchanged for the two-year period commencing July 1.

The amount determined and set for each member of the Council shall be the same, except that the amount for the Mayor may exceed that of the other members of the Council. The compensation shall be an amount that takes into account the full-time nature of the office. It also shall be commensurate with the compensation then being paid for other public or private positions having similar full-time duties, responsibilities and obligations.

Before the Commission adopts any such resolution, it shall conduct at least two public hearings on the matter. The Commission's resolution shall set forth the reasons for its determination and shall be adopted by the affirmative vote of at least three (3) members of the Commission. The Commission's resolution shall be subject to the referendum provisions of this Charter and shall take effect following the expiration of thirty (30) days from the date of its adoption for implementation on July 1. The City Clerk shall transmit the Commission's resolution to the Mayor and each member of the Council and to the appropriate City officials for implementation.

Compensation determined and set pursuant to the provisions of this Section shall remain in effect until changed by a subsequent resolution of the Commission adopted pursuant to the provisions of this Section.

For each member of the Council, except the Mayor, a sum, as established by the Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, that he or she fails to attend; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized

City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. No deduction shall be made from the salary of the Mayor because of his or her failure to attend any Council meeting.

- (b) The duties of a member of the Council require a full-time commitment and the Commission is charged with determining the compensation of the members of the Council accordingly. No member of the Council, including the Mayor, shall receive compensation for services rendered outside his or her duties as a member of the Council. This does not prohibit a member of the Council, including the Mayor, from receiving income from an interest in a business or in an investment in which he or she is not actively engaged.