



Agenda Report - Supplemental Report

18-339

Agenda Date: 3/20/2018

REPORT TO COUNCIL

SUBJECT

Supplemental Report to Item 18-324 Actions on the Elected Chief of Police's Cost of Living Request and on the Elected Chief of Police and City Clerk Compensation Setting Process

BACKGROUND

Agenda Report Item 18-324 was prepared to provide information on the Elected Chief of Police' cost of living request and on the Elected Chief of Police and City Clerk compensation setting process.

This report is being provided to offer additional information about the actions taken by City staff pertaining to the compensation of the elected Chief of Police. At the time of the writing of the original report, I was not aware of these details which require me to disclose more information for the purpose of the City Council's decision making. Some of these matters may be personnel related, and I am pursuing them administratively, thus I may be limited in what I can say publicly. However, this does not change the policy options provided in the original report nor the recommendation for corrective action.

It has come to my attention that at the time of the approval of the Unclassified Police Management (Unit 9A) Memorandum of Understanding, the Chief of Police's compensation was implemented:

- With compensation increases for cost of living and POST pay equal to Unit 9A despite the absence of public disclosure/action as required by the Brown Act; and
- Against the legal advice of the City Attorney.

DISCUSSION

As mentioned in the main report of this agenda item, the transition of the new City Manager and City Attorney has resulted in the need to rely on public records and staff accounts. Here is additional information for the City Council to consider for decision-making purposes:

1. The current Memorandum of Understanding (MOU) with Unit 9A- Unclassified Police Management Employees is for the term of December 18, 2016 to December 22, 2018.
2. This MOU was ratified and approved by the City Council at a Closed Session on March 21, 2017.

3. The Unit 9A MOU was reported out of Closed Session on March 21, 2017 as follows: "Council approved the terms of a successor Memorandum of Understanding (MOU) with Unit 9A - Unclassified Police Management Employees effective immediately which includes retroactivity for certain elements including wage increases and Peace Officer Standards and Training (POST) certification pay." At that time, staff confirms that the Human Resources Director requested that the City Attorney include the elected Chief of Police in the verbal Closed Session report out relative to Unit 9A.
4. In response to her request, the City Attorney informed the Human Resources Director that action on the elected Chief of Police would be out of compliance with the Brown Act because that action could not be taken in Closed Session and it was not noticed on the open meeting portion of the City Council meeting agenda.
5. Per Human Resource Director, the Chief of Police classification has been treated with the same MOU terms as Unit 9A in our Human Resources Information System (PeopleSoft). The elected Chief of Police position may have been "coded" improperly in the PeopleSoft system in March 2017, as well. Nevertheless, staff proceeded to enter cost of living increases for the Chief of Police as part of the Unit 9A compensation adjustments.
6. It appears that staff processed the same increase for the elected Police Chief, despite the advice from the City Attorney that the necessary Council approval had not been publicly granted, as a result of a lack of internal controls.
7. In addition, on June 27, 2017 (Item 12.A.6) the City Council was presented with a staff report recommending that the elected Chief of Police be awarded the same MOU provisions negotiated with Unit 9A (Attachment 1); however, the Interim City Manager continued the item without providing a specific date or the purpose for the continuance. The memo also did not disclose that staff had already implemented the increase and, shortly thereafter, the Human Resources Department discontinued the increase.
8. For the period of April 8, 2017 to July 15, 2017, the elected Chief of Police received the same MOU and POST increases as Unit 9A (including retroactive payments from December 18, 2016).
9. After the Human Resource Director became aware that the Chief of Police received these increases without the necessary Council authorization and public action, the Human Resources Director directed the discontinuance of the Chief of Police increases. This occurred in June 2017.

10. The Human Resources Director reports that she did raise this matter with the Interim City Manager, but did not receive direction on how to proceed to correct it. As such, this matter went unresolved between June 2017 - present. I can confirm that upon entry into this organization in October 2017, this matter was brought to my attention and not resolved.
11. The Human Resources Director advised the Mayor of the inappropriate increase to the Chief of Police and that necessary corrective action would need to be as an agenda item at a public Council meeting.
12. It is not clear whether the Interim City Manager advised the full City Council of this matter.

The City Attorney advised staff appropriately of the requirement to follow the Brown Act, which prohibits Council from approving compensation increases for an elected official in Closed Session and that compensation approvals of elected Officials can only occur at a regular public meeting of the Council. This action is confirmed by both the Human Resources Director and City Attorney.

The Human Resources Department's weak internal controls resulted in the inappropriate administrative actions that followed. This is both a serious failure to adhere to the required actions to put into place a compensation increase for elected public officers, despite clear advice from the City Attorney, as well as mis-management of our payroll system. This is yet another example of loose management controls that I surfaced at the January Goal Setting/Policy Priority Session and the risk to the organization when present.

This is a regrettable set of past actions that will be corrected going forward: however, this agenda item provides for the first action required to correctly approve the elected Chief of Police's compensation. In closing, I have had less than twenty-four hours to review fully this development and if new information surfaces from the issuance of this memo to the Council hearing, I will be sure to clarify any new details.

Prepared and Approved by: Deanna J. Santana, City Manager

The City Clerk/Auditor read the "Behavioral Standards for Public Meetings."

MOTION was made by Davis, seconded and carried with Kolstad, Mahan and Watanabe abstaining (not present at the meeting) (Caserta absent), that the **Minutes** of the **Bayshore North Project Enhancement Authority** for the Meeting of **January 8, 2013** be adopted as written.

MOTION was made by Davis, seconded and carried with Mahan abstaining (not present at the meeting) (Caserta absent), that the **Minutes** of the Concurrent Meeting of **May 23, 2017** be adopted as written.

MOTION was made by Davis, seconded and unanimously carried (Caserta absent), that the Council **continue** the following reports to a future meeting: 1) the Director of Human Resources' report recommending approval to tie the **salary and benefits of the Chief of Police to Unit #9A – Unclassified Police Management** and authorization to apply the wage adjustment and other benefits described in the Unit #9A Memorandum of Understanding, including the 5% wage adjustment retroactive to December 18, 2016 and 2) the Director of Public Works/City Engineer's report recommending approval of the **Agreement for Transfer of Real Property Required for the San Tomas Expressway Widening Improvements Project** (SC 18,968) with the **County of Santa Clara** and the Grant Deed granting to the County of Santa Clara the City-owned land at the northwest corner of Homestead Road and San Tomas Expressway [APN 290-38-051 (2016-17); SC 18,959].

MOTION was made by Davis, seconded and unanimously carried (Caserta absent), that the Council **consider** earlier than agendaized the Director of Parks and Recreation's report recommending the acceptance of a donation from **The Santa Clara Lion's Club** in the amount of \$370 and **direct** that it be considered after the Special Orders of Business.

As a Special Order of Business, the Council proceeded to consider the City Clerk/Auditor's report regarding the appointment of one applicant to fill the vacancy on the Historical and Landmarks Commission for the full term ending June 30, 2021. The Mayor stated that the Council interviewed the following applicants earlier in the evening: Nancy A. Biagini and Kiran Shinde. The following applicants were not present for the interviews: Gautam H. Barve and Arundhati Bhowmick. **MOTION** was made by Mahan, seconded and unanimously carried (Caserta absent), that the Council **appoint Nancy A. Biagini** to the **Historical and Landmarks Commission** for the full term ending June 30, 2021.

As a Special Order of Business, the Council proceeded to consider the Executive Assistant to the Mayor and City Council's informational report recognizing Santa Clara Unified School District students selected as winners of the **Healthier Kids Foundation and Santa Clara Challenge Team Essay Contest**. Laura Clendaniel, Development Associate for Healthier Kids Foundation, addressed the Council and introduced Martha Gabaray, Program Coordinator with Santa Clara Challenge Team. Ms. Gabaray gave an electronic presentation regarding the Santa Clara Challenge Team's 1st Annual Poster Contest with the theme "What Does Health Mean To You". Liam, a third grader at Millikin Elementary School and Khushi, an eighth grader at Peterson Middle School read their essays.



AGENDA REPORT

Date: June 27, 2017

To: City Manager for Council Action

From: Director of Human Resources

Subject: Approval to Tie the Salary and Benefits of Unit 9A - Unclassified Police Management to the Chief of Police and to Apply the 5% Memorandum of Understanding Wage Adjustment to the Chief of Police Retroactive to December 18, 2016

EXECUTIVE SUMMARY

On March 21, 2017, the City Council approved the terms of a successor Memorandum of Understanding (MOU) with Unit 9A – Unclassified Police Management that included certain elements including wage increase retroactive to December 18, 2016. The MOU wage adjustment, effective December 18, 2016 was 5% for Unit 9A.

The Chief of Police is elected by the voters and the department is organized into four divisions: Investigations, Field Operations, Administrative Services and Special Operations. Police Management employees oversee each of the four divisions within the Police Department and the Chief of Police oversees the totality of the Police Department. Unit 9A consists of the Assistant Chief of Police and Police Captains.

It has been an ongoing practice of the City of Santa Clara to tie the salary and benefits of the Chief of Police to Unit 9A to prevent salary and benefit compaction through the hierarchy of the public safety classification family.

ADVANTAGES AND DISADVANTAGES OF ISSUE

The advantage of continuing this practice is to maintain a relationship in salary and benefits within the public safety class family and prevent compaction between the classifications.

ECONOMIC/FISCAL IMPACT

The additional salary and benefits has been included in the current 2016/2017 fiscal year budget and has been built into the 2017/2018 fiscal year budget as has been done regularly in the past. The total cost in wages to apply the 5% MOU wage adjustment to the Chief of Police, retroactive to December 18, 2016, is \$7,812.

City Manager for Council Action

Subject: Approval to Tie the Salary and Benefits of Unit 9A - Unclassified Police Management to the Chief of Police and to Apply the 5% Memorandum of Understanding Wage Adjustment to the Chief of Police Retroactive to December 18, 2016

June 27, 2017

Page 2

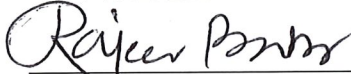
RECOMMENDATION

That the Council approve to continue to tie the salary and benefits of the Chief of Police to Unit 9A - Unclassified Police Management and to authorize the application of the wage adjustment and other benefits described in the Unit 9A MOU, including the 5% wage adjustment retroactive to December 18, 2016.



Elizabeth C. Brown
Director of Human Resources

APPROVED:



Rajeev Batra
City Manager

Documents Related to this Report: None