

2/6/18

Item 2.E

Brian Doyle

From: Liz Brown
Sent: Tuesday, February 6, 2018 7:14 AM
To: Brian Doyle; Deanna Santana
Subject: Fwd: Closed Session Item E

FYL...

Liz

Sent from my iPhone

Begin forwarded message:

From: Rajeev Batra
Date: February 6, 2018 at 6:49:14 AM PST
To: <L.Gillmor@SantaClaraCA.gov>, <PKolstad@SantaClaraCA.gov>, <K.Watanabe@SantaClaraCA.gov>, Dominic Caserta, Teresa O'Neill, Debi Davis, Patty Mahan
Cc: <lizbrown@SantaClaraCA.gov>
Subject: Re: Closed Session Item E

Dear Mayor and Councilmembers

Today you will be discussing an item that you all unanimously approved in March 2017 and reported at the public session right after the discussion.

Since I can not be at the closed session discussion per the rules, I am writing this email to share some facts as it has been 11 months since your last discussion.

In March 2017, while I was still fully employed by the City, you all discussed in Closed Session and approved two items for me; one was to approve a 5% increase in salary to set the hourly rate for me to continue as City Manager effective March 31, the first day after my official retirement and the second item was to approve a supplemental retirement benefit for City to pay the retirement difference between my average annual salary of about \$296k and the PERS retirement cap of \$265k per IRS regulations. You approved this subject to IRS verification and reported at the open session under motion made by CM Mahan.

Brian Doyle, Acting City Attorney and I, were not present in closed session discussion as it was a personnel matter. Liz Brown, Director of HR, was present. It needs to be shared that Mr. Doyle wrote to me in Sept 2017 that the Council approved the 5% salary increase in lieu of the retirement benefit.

As I stated above these are two separate items. The salary increase was to set my hourly rate as an annuitant and was initiated by HR Director. That is not in any way subject IRS regs or PERS cap.

The retirement benefit was approved separately subject to IRS section 401(a)(17) verification and reported in open session.

I provided an opinion first from a Certified Tax Accountant stating that City could pay this benefit without violating the IRS section.

However, I was informed by HR Director Brown subsequently that you all had asked Brian to provide a legal opinion. In the meantime there were discussions between HR Director and Finance Director as to mechanics of how to pay this benefit I.e. on a monthly basis or annually etc. I waited for the legal opinion but in Sept. 2017, Brian once again wrote to me that the Council gave me 5% salary increase in lieu of the retirement benefit so nothing more needs to be done. He also wrote to me separately that since it is impossible to obtain an opinion from IRS, this case is closed.

I left City service at the end of Sept 2017 and subsequently retained the services of Berliner Cohen, a reputed San Jose Law Firm, to follow up with IRS and to provide a legal opinion letter to address any legal issues relative to the IRS section stated publicly. Tyler Shewey of BC law firm did the legal research with IRS and wrote an opinion letter on Dec. 12, 2017 clearly concluding that the City can enter into a side agreement with me for this retirement benefit without violating IRS section 401(a)(17). You all have a copy of this letter.

I served the City professionally and with dignity for 15 years. I also stepped up when asked to act as Interim City Manager in April 2016. And gave my heart and soul to the job to keep the City moving forward. I did not receive a contract as a City Manager and I respectfully accepted that as well. I really appreciated your gesture when you approved this supplemental retirement benefit.

I sincerely appeal to you to finalize this discussion and approve this agreement. This is not a new request but a benefit approved in March 2017 subject to legal verification that You now have from Berliner Cohen on my behalf.

Please approve it.

Sincerely
Rajeev

Sent from my iPhone