

City of Santa Clara

City Council Meeting

Agenda Item 4: Batra's request for Post Employment Benefit

April 24, 2018



Background

- Former Interim City Manager, Rajeev Batra retired from the City of Santa Clara effective March 30, 2017
- State law prohibits employing retired public employees immediately after retirement (normally a 6 month waiting period).
- Immediate hiring of retiree requires the adoption of a special resolution stating that the City could not find anyone to fill the position. No rehired retiree can receive more than what their compensation was before retirement.
- All retirees are paid only an hourly basis and do not receive or accrue additional benefits

Timeline

- On March 7, 2017:
 - Closed Session: Public Employee Performance Evaluation pursuant to Government Code Section 54957; Title: Interim City Manager. (NO REPORT OUT)
 - Open Session: Council approved a 5% merit increase for Mr. Batra
- On March 21, 2017, Council adopted Resolution No. 17-8419, which provided an exception to the 180-day waiting period to appoint a retired annuitant to a vacant position to serve in an interim term
- On March 24, 2017, Mr. Batra signed letter

3



Report to Council



**City of
Santa Clara**
The Center of What's Possible

AGENDA ITEM #: 14.A4

AGENDA REPORT

Date: March 7, 2017
To: City Council for Action
From: Director of Human Resources
Subject: Proposed Salary Placement and Merit Increase for Interim City Manager

EXECUTIVE SUMMARY

The Interim City Manager assignment was tied to the Miscellaneous Management Bargaining Unit, Unit 9. In addition, the Interim City Manager has a regular full time ongoing position as the Director of Public Works and as such is also tied to the Miscellaneous Management Bargaining Unit, Unit 9.

Per the Unit 9 Memorandum of Understanding (MOU), employees are guaranteed a Merit pay adjustment in 2017 of at least 2%, and up to 5%.

If this recommendation is approved, the City of Santa Clara's Compensation Schedule will need to be updated to reflect the increase to the Interim City Manager's monthly salary effective the first full pay period following this agenda report, March 12, 2017.

A five (5) percent merit increase would increase the Interim City Manager's monthly salary from \$25,141 to \$26,398 effective March 12, 2017.

4



Motion from March 7, 2017

MOTION was made by Mahan, seconded by Kolstad, and unanimously carried, that the Council approve the 5% merit salary increase for Rajeev Batra, Interim City Manager, per the Miscellaneous Management Memorandum of Understanding and update the City of Santa Clara's Compensation Schedule from \$25,141 per month to \$26,398 per month, "...subject to getting some confirmation, preferably in writing, of the application of the Internal Revenue Code Section 401(A)(17) because if that - that's the compensation limitation law - so if we get an affirmative determination under that section, I understand that it will be of a greater benefit than this, **but if we get a negative determination on that law, then this would be in place.**"

5



§ 54957(b)(4) Closed sessions; personnel matters; exclusion of witnesses

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. * * * This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to [Sections 1461, 32106, and 32155 of the Health and Safety Code](#) or [Sections 37606 and 37624.3 of the Government Code](#). ***Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.***

6



§ 54957.6. Closed sessions; salaries, salary schedules or fringe benefits

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

...

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

...

7



Resolution No. 17-8419

- ***WHEREAS, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive;***
- ***WHEREAS, the City of Santa Clara and Rajeev Batra certify that Rajeev Batra has not and will not receive a Golden Handshake or any other retirement-related incentive***
- ***WHEREAS, the entire employment agreement, contract or appointment document between Rajeev Batra and the City of Santa Clara has been received by this body and is attached herein***

8



Resolution No. 17-8419 (con't)

- *WHEREAS, the maximum base salary for this position is \$26,398.00 and the hourly equivalent is \$152.296, and the minimum base salary for this position is \$26,398.00 and the hourly equivalent is \$152.296*
- *WHEREAS, Rajeev Batra has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.*

9



Letter



March 22, 2017

Rajeev Batra
2709 Capitola Terrace
Fremont, California 94539

Dear Mr. Batra:

This will confirm your interim appointment as a retired assistant to the vacant position of City Manager for the City of Santa Clara under the 180 Day Resolution per the Government Code section 21221(h), effective March 31, 2017. This section 21221(h) appointment shall only be made once per the California Public Employees Retirement System and therefore the appointment will end by December 31, 2017.

As you discussed with Elizabeth Brown, Director of Human Resources, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate. The monthly salary for this position is \$26,398.00 and the hourly equivalent is \$152.296.

There will not be any benefits, incentives or compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

We look forward to continue working with you and thank you for assisting the City by filling this position while we recruit to fill the next City Manager for the City of Santa Clara.

Very truly yours,

Lisa M. Gillmor
Mayor

BB

I, Rajeev Batra, accept the terms and conditions of my appointment to City Manager on an interim basis for the City of Santa Clara.

Rajeev Batra

3.24.17
Date

Mayor

Lisa M. Gillmor

Council Members

Dorelle J. Caserin
Debi Davis
Patrick Kriestel
Patrick H. Kwan
Teresa O'Neil
Kathy Wuzanski

10



City Attorney Memorandum

- The Council also cannot grant any other type of additional retirement benefit or compensation; such a grant would be a **violation of the state constitutional provisions prohibiting gifts of public funds.**
- Mr. Batra specifically agreed to the condition that:
 “[t]here will not be any benefits, incentives or compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate (of \$152.30).”

Legal Opinion

- Under state law, **the City cannot offer** the former Interim City Manager a **supplemental defined benefit plan** (e.g. a plan that offers a set dollar figure, based on a defined benefit formula using age, service credit and pensionable compensation) unless such plan existed prior to January 1, 2013, and the City Manager position was within a group of employees entitled to participate in the supplemental defined benefit plan at that time.
- **We understand that no such plan applicable to the former Interim City Manager existed.**

Staff Recommendation

- Per the City Attorney's memorandum and, as is set forth in greater detail in the legal opinion by Erin Kunz of the Liebert Cassidy Whitmore law firm (Attachment 3), the City Council **does not have authority** to provide Mr. Batra with the benefit he has proposed, therefore, there is no authority for Council to take action on his request for supplemental retirement.



Jennifer Yamaguma

From: Rajeev Batra [REDACTED]
Sent: Thursday, April 19, 2018 9:49 AM
To: Teresa O'Neill; Patty Mahan; Patrick Kolstad; Lisa Gillmor; Kathy Watanabe; Dominic Caserta; Debi Davis
Cc: Deanna Santana; Jennifer Yamaguma
Subject: Hearing on April 24, Request to continue

Dear Mayor and Council members

First of all, thank you all for agreeing to hear my item on the 24th. Since it was approved to be heard on a date certain, I suppose it needs to be placed on the agenda for the 24th.

It is my understanding that Councilmember Kolstad will not be present at the 24th Council meeting. My desire is to present my request to the full council as it was approved by the full council in March 2017. Therefore, I request that this item be placed on May 8 or a future agenda when the full Council is expected to be present.

Thank you for your consideration.

Sincerely
Rajeev Batra

Sent from my iPhone