



Agenda Report

18-324

Agenda Date: 3/20/2018

REPORT TO COUNCIL

SUBJECT

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

EXECUTIVE SUMMARY

The City Charter's procedure for setting the salaries of the elective offices of the Mayor and City Council members does not include the elective offices of Police Chief and City Clerk. Instead the City Council has in the past set the salaries of these two offices through: a council report for council action; an ad hoc salary setting committee; announcements out of closed session based on approvals of MOUs with bargaining groups; and, by delegation of their authority to the former City Manager to award merit increases outside of public meetings.

The following report is being presented to the Council in response to multiple verbal requests by the elected Chief of Police to have the Council increase his compensation by a cost of living adjustment, equal to the Unit 9A--Police Management's bargaining agreement, totaling 8% and other benefits for a 2-year period. Although the elected Police Chief has not submitted a written request for the increase to the current City Manager (at the time of issuance of this report), he has raised this issue verbally with the City Manager, Chief Operating Officer, and Human Resource Director. The City Manager has requested a written request from Chief Sellers upon notice from him on March 15 of his absence from the March 20 City Council meeting due to business travel.

Upon notice of this request from the elected Chief of Police, as the new City Manager transitioned into office, it was necessary to review past practices and the current legal requirements regarding compensation increases for elected officials. It became apparent to the City Attorney and the City Manager that the many past practices and procedures for setting the compensation of the elected Police Chief and the elected City Clerk were at variance with state laws and with the practices of other jurisdictions that set elected officials' compensation. These past non-conforming actions include:

- City Council action to delegate authority to the City Manager to administer merit increases to elected officials;
- Providing "merit" increases to elected officers;
- Providing automatic cost-of-living increases linked to Unit 9A and Unit 9 MOU negotiations without proper public Council action.

Due to the irregular past practices and new laws, the new City Manager and new City Attorney took a closer review to establish a legal and non-conflicted methodology to address the elected Chief of Police's concerns to ensure compliance with applicable state law as well as looking at regional practices regarding benefits and wages for elected officials such as the Police Chief and City Clerk.

Because the practices and events regarding compensation increases took place before the current City Attorney and City Manager were appointed, we have had to rely on past reports and Human Resource Department staff to sort through the various actions.

The following report provides options for the City Council to consider:

- (1) Compensation request of the current elected Police Chief for cost of living
- (2) Policy options on how to proceed with salary setting for both the elected positions of Police Chief and City Clerk.

BACKGROUND

The current Chief of Police was elected on December 8, 2012 and re-elected on December 13, 2016. His term expires December 2020. The elected City Clerk position is currently vacant.

The City Charter references the Chief of Police and City Clerk as elected officials in several places, but does not include either position in the compensation-setting process which is used for the City's other elected officials found in Section 702, amended by the voters at the Nov. 8, 2016 General Election. It is unclear why the Charter Review Committee did not include these two offices in the salary setting process when they authored the Charter amendment regarding salary setting. (see Attachment 1 for relevant sections):

- Article VI. The Elective Officers, Section 600, City elected officers: This section recognizes the Chief of Police and City Clerk as elected officers of the City.
- Article VII, Section 702, Compensation: This section references compensation for each member of the City Council but not for the Chief of Police or City Clerk.
- Article IX, Section 903, City Clerk: Describes the duties of the City Clerk.
- Article IX, Section 906, Chief of Police: Describes the duties of the Chief of Police.
- Article XI, Section 1101, Classified service: This section clarifies that the Chief of Police and City Clerk are included in the unclassified service.

In 1990, the City Council established an ad hoc salary review committee officially named the Council Officers and Elected Full-Time Employee Performance/Salary Review Committee (Attachment 2). From the review of historical documents, it appears that the practice of having the Salary Review Committee consider compensation for these two elected positions began to transition when the City Council granted delegation of authority to the City Manager to authorize and administer merit increases to those elected positions. This occurred in May 2014.

As noted above, wage adjustments have been provided inconsistently through: a council report for council action; an ad hoc salary setting committee; announcements out of closed session based on approvals of MOUs with bargaining groups; and, by delegation of Council authority to the former City Manager to award merit increases outside of public meetings.

Applicable State Laws: In light of the City of Bell's headline media stories of inappropriate handling of compensation increases for both the City Council and staff, the State laws requiring greater transparency on the compensation of high-ranking local officials have come into greater focus. As recently as August 23, 2016, Governor Brown signed SB 1436, which mandates that local agencies report out certain information before changing the compensation or benefits of their "executives".

Below are the State laws that apply to the setting of local agency executive compensation:

Government Code Section 54953 (c) (3) provides that effective January 1, 2017, Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

Government Code Section 54956 (b) provides: notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1.

Government Code Section 54957 is the section of the Brown Act that allows for the City Council to consider the appointment and performance of city officers that it appoints. However, Council may not discuss the appointment, performance or compensation of elected officials in closed session. Thus, the Brown Act prohibits the setting of compensation of elected officials, including those who are department heads, outside of an open regular meeting of the legislative body.

Elected Chief of Police Salary History: In 1994, the City's Chief of Police retired prior to the expiration of his term. City Council determined that an election to fill that unexpired term would be held in June 1994. On February 15, 1994 (Attachment 3), Council voted to approve the salary and benefit package recommended by the Salary Review Committee for the position so that candidates were aware of the position's salary. That package included setting the salary at 5% above the actual total compensation for the Assistant Chief of Police at that time and excluding the Chief of Police classification from Unit 9A (Unclassified Police Management) representation. Although not a represented member of that bargaining Association, Council determined that the elected Chief of Police's annual cost of living and other benefit increases should be commensurate with those negotiated by Unit 9A. The record shows that this is when the practice of linking cost-of-living increases and other benefit increases to be the same as those negotiated by bargaining unit 9A for the elected Chief of Police. Following that June election for Chief of Police, on July 5, 1994 (Attachment 4), Council approved the salary and benefits for the newly elected Chief. Council confirmed that the elected Chief was not assigned as a member of Unit 9A, but that his annual cost-of-living and other benefit increases should be the same as those negotiated by Unit 9A. This action set the salary and benefits of the Police Chief at the time and was done in open session.

Prior to January 2010, wage adjustments (merit and cost-of-living), were approved by the City Council.

At his election in 2012, the current elected Chief of Police's salary was set at 5% above his previous salary as the Assistant Chief of Police. Chief Sellers' first "merit" increase was approved by the former City Manager following the City Council's May 20, 2014, delegation of authority (Attachment 5). Additionally, another 5% "merit" increase was approved by the former City Manager on November 9, 2014. On October 27, 2015, the Council noted and filed the former City Manager's approval of salary increases for Chief Sellers effective November 8, 2015 and City Clerk Diridon, effective June 7, 2015 (Attachment 6). The Chief of Police was re-elected and sworn in on December 13, 2016, and since that date, his salary has not been adjusted to reflect the cost of living increases as noted above.

Table 1: Summary of the Elected Chief of Police's Compensation Increases

Year	Compensation Increase	%
12/18/2012	Elected to Chief of Police	5.00%
5/25/2014	Merit Increase	5.00%
11/09/2014	Merit Increase	5.00%
03/15/2015	Wage Adjustment tied to Police Mgmt. Unit 9A	3.10%
11/08/2015	Merit	5.00%
12/20/2015	Wage Adjustment tied to Police Mgmt. Unit 9A	6.00%
12/18/2016	Did not receive Unit 9A Wage Adjustment of 5.0%	0.00%
12/17/2017	Did not receive Unit 9A Wage Adjustment of 3.0%	0.00%

City Clerk Salary History: The former elected City Clerk was first elected to the position in November 2004. Since 2005, the elected City Clerk received the same MOU wage and benefit adjustments as Unit 9 as well as Council approved merit increases based upon recommendations by the Salary Review Committee and wage and benefits adjustments tied to Unit 9 MOU increases. The following table illustrates the compensation increases for the former elected City Clerk since 2004. The merit increases from 2014-2016 were administered by the City Manager under the delegated authority.

Table 2: Summary of the Elected City Clerk's Compensation Increases

Year	Compensation Increase	%
12/08/2004	Elected to City Clerk	
07/17/2005	City Council Wage Adjustment	15.00%
12/16/2007	Wage Adjustment tied to Unit 9 Misc. Mgmt.	2.30%
11/30/2008	Merit Increase	10.00%
07/12/2009	Merit Increase	7.57%
12/27/2009	Wage Adjustment tied to Unit 9 Misc. Mgmt.	5.35%
5/25/2014	Merit Increase	4.37%
01/04/2015	Merit Increase	4.39%
06/07/2015	Merit Increase	4.42%
12/20/2015	Wage Adjustment tied to Unit 9 Misc. Mgmt.	4.50%
12/15/2016	Wage Adjustment tied to Unit 9 Misc. Mgmt.	4.00%

The merit increases from May 2014 - June 2015 were awarded under the City Manager's May 2014 delegated authority. The position of City Clerk is currently vacant.

DISCUSSION

Legal Compliance and Transparency

It appears that “merit” increases have been approved for these elected positions for some time and have been awarded through various methods, including Council action and City Manager authority. Some increases, but perhaps not all, were made public as an item that was noted and filed by the City Council at a public meeting; and some, but perhaps not all, were inappropriately reported out as resulting from an approval of a labor agreement with a bargaining unit.

Elected officials are not employees of the City Council, thus, they cannot be evaluated by the City Council in a Closed Session like appointed officers, such as the City Manager or City Attorney. Elected officials, including an elected Chief of Police, also cannot be evaluated by the City Manager for the purpose of a “merit” increase, as the appointment of an elected Chief of Police is made by the voters, not the City Manager. The elected Chief of Police is responsible to the voters, as are the Mayor and City Council. Although the Chief is also a department head who must work collaboratively with the City Manager, the City Manager does not evaluate him or set his compensation.

Therefore, the concept of a salary increase based upon “merit” does not appear to have a legal basis. Staff is not aware of any jurisdiction that bases the setting of the compensation for elected officials on the performance of the individuals holding office, and thus we have not found any other jurisdictions which grant merit increases to their elected officials. As noted previously, the City Manager was inserted into the salary setting process by delegation of authority in May 2014. This action should not have been granted, as the City Manager has no oversight of these elected positions and does not administer performance evaluations for these two elected positions. The City Manager is responsible for the performance/salary reviews of all non-elected City staff, except the City Attorney and City Auditor, per the City Charter.

It is unclear why the notion of “merit” increases was inserted into the process for setting elected official’s compensation. It is also unclear whether there was ever an analysis of the legality of delegating the Council’s legislative authority to the City Manager to award increases to the compensation of elected officials outside of regular public meetings of the City Council. The delegation to the City Manager to award merit increases to an elected position is not appropriate, nor is there a legal basis for this process. As such, the City Manager requests immediate removal of this delegated authority.

Further, as elected officials, neither the elected Chief of Police, nor elected City Clerk, can be represented members of the Unclassified Police Management Association (Unit 9A) or the Unclassified Miscellaneous Management Employees (Unit 9). Past increases in cost-of-living adjustments to compensation and changes to benefits for both these positions have tracked corresponding changes in MOU-negotiated and approved agreements for Unit 9A or Unit 9.

Given that these two positions are elected officers subject to the transparency mandated by the Brown Act provisions discussed above, it is inappropriate to automatically increase their compensation based on approvals of changes to collective bargaining agreements reported out of the Council’s Closed Session. All increases need to occur at regular public City Council meetings to comply with the Brown Act.

Based on the above, it would be inappropriate for the City Manager to implement the elected Chief of Police's verbal request and, instead, the City Manager seeks the City Council's action to appropriately address:

- (1) Compensation request of the current elected Police Chief for cost of living
- (2) Policy decision on how to proceed with salary setting for both the elected positions of Police Chief and City Clerk.

As stated above, the City Manager and City Attorney recommend discontinuance of past practices that delegate compensation increases to City staff outside of public meetings. Additionally, staff provides the following alternative options for the Council to consider for the setting of salaries for the elected Chief of Police and elected City Clerk.

Policy Options

Options for salary setting for the elected Chief of Police and elected City Clerk

Option 1: Charter Amendment to delegate salary setting to commission

Direct staff to bring forward a charter amendment of Section 702 titled Compensation (see Attachment 1). Currently, this section delegates the setting of salaries for the Mayor and City Council to an independent Salary Setting Commission of Santa Clara citizens. This is similar in concept to the State Constitutional provision that delegates the setting of state elected officials' salaries to an independent commission. The section could be amended to include the Chief of Police and City Clerk.

Option 2: Ordinance to delegate salary setting to commission

Delegate by ordinance authority to set salaries of the Police Chief and the City Clerk to the independent Salary Setting Commission.

Options for Granting the Elected Chief of Police a Salary Increase

Option 1: Police Chief - 8% Cost-of-Living Adjustments

Approve a 5% cost-of-living adjustment and benefits adjustment effective December 18, 2016 and an additional increase of 3% effective December 17, 2017 commensurate with the Unit 9A adjustments for 2016 and 2017.

Option 2: Direct Policy Development on Salary Differential from Elected Chief of Police and Assistant Chief of Police

1. **Salary Differential** -- Direct staff to bring back a policy that sets the salary 5% above the Assistant Chief of Police **salary** for the elected Chief of Police. Currently, the Assistant Chief of Police's **salary** is \$276,396 and maintaining a 5% differential would result in an elected Chief of Police salary at \$290,216. Although the City Manager, per Charter Section 802, Powers and Duties, serves as the appointing authority for all employees in the Police Department and the City Clerk's Office, the elected Police Chief and elected City Clerk recommend merit increases as part of the annual evaluation process for the Assistant Police Chief and the Assistant City Clerk, respectively. Aligning a salary differential of the elected official to the current salary of the highest ranked employee in these departments would create a potential conflict of interest if the

Elected Official continues to participate in a decision that would also determine his or her own compensation in the annual evaluation process. Staff recommends that the evaluations be completed by the City Manager for the Assistant Police Chief and the Assistant City Clerk, including merit increases.

2. **Salary Range Differential** -- Direct staff to bring back a policy that sets the salary 5% above the Assistant Chief of Police **salary range** for the Chief of Police. The highest paid employee in the Police Department is the Assistant Chief of Police. The top of the salary range for the Assistant Chief of Police is \$333,864 per year and the incumbent's actual salary is \$276,396 per year, which is 4.71% below the elected Chief of Police's salary. Aligning the elected Chief of Police's salary to 5% above the top of the **salary range** of the Assistant Chief of Police would provide the elected Chief of Police a 20.86% salary increase to approximately \$350,557.

Options for the Elected City Clerk Salary

The highest paid employee in the City Clerk's Office is the Assistant City Clerk. The future City Clerk's salary could also be placed at 5% above the top of the **salary range** or **salary** of the Assistant City Clerk (as described for the elected Chief of Police above).

1. **Salary Range** -- The top of the salary range for the Assistant City Clerk is \$153,144 per year and 5% above that in salary for the City Clerk would be approximately \$160,801 per year.
2. **Salary** - The position of Assistant City Clerk is vacant and, as such, there is no salary to reference for the purpose of establishing a 5% differential
3. As a final option, the discussion of the salary of the City Clerk may be taken up at the March 29, 2018 City Clerk Study Session, if the Council so directs.

Other Consideration

Various Benefits including Vacation, Management Leave, and Sick Leave Accruals

Currently, the benefits for the Elected Police Chief and Elected City Clerk are tied to Unit 9A and Unit 9, respectively. It appears to be a highly unusual practice for elected officials to receive leave accruals. If the Council would like to consider discontinuing this unusual practice, staff recommends not discontinuing within the current terms of an office holder.

External/Market Equity

As background, in order to determine a competitive compensation structure, regional cities benchmark their wages and benefits by classification. The City of Morgan Hill has two elected officials, the City Clerk and the City Treasurer for which they receive monthly stipends of \$200 along with other benefits depending if they participate in CalPERS. Other than the City of Morgan Hill, since the County of Santa Clara is the only other agency in the region which has elected officials, outside of the legislative function, staff reviewed the County's practice for setting elected officials' salaries. The County of Santa Clara has two law enforcement elected officials, the Sheriff and District Attorney. Annually, the County sets compensation of those elected officials by ordinance.

For that process, the County's Human Resources Department, Employee Services Agency (Executive Services Division) conducts surveys of elected officials in other jurisdictions to determine appropriate salaries. They recommend salary increases if there is compaction and the salary

differential is below 5%. Currently, the spread between all of their elected classifications and deputies are over 5%. The Sheriff earns 6.03% more than the top of the Undersheriff's salary range. County elected officials do not receive performance evaluations and that is typical for elected officials in the state.

In addition, as part of the review of practices for wage adjustments for elected officials except for the Mayor and City Council, staff also reviewed benefit structures. Currently, the Police Chief Position benefits are aligned to the Police Management Unit and the City Clerk position benefits are aligned to the Management Association which includes the accruals of various leaves. The County of Santa Clara provides typical health, dental, life insurance benefits, etc. However, the County does not provide any vacation, management, and sick leave accruals for its elected officials.

For the Chief of Police benchmarking survey, the City of Santa Clara Chief of Police's salary is 13.63% above benchmark agencies (Hayward, Milpitas, Mountain View, Palo Alto, and Redwood City) and 7.89% above in total compensation.

FISCAL IMPACT

The fiscal impact depends on Council's direction.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Provide direction to staff based on policy options for the salary setting process for the Elected Chief of Police and City Clerk. The City Manager has no recommendation.
2. Provide direction on the authorization of a 5% cost-of-living adjustment and benefits adjustment effective December 18, 2016 and an additional increase of 3% effective December 17, 2017 commensurate with the Unit 9A adjustments for 2016 and 2017. The City Manager has no recommendation.
3. City Manager recommends the City Council approve changes to the current salary setting process, as follows:
 - a. Repeal the previous City Council action to delegate authority to the City Manager to administer merit increases to elected officials;
 - b. Discontinue the practice of granting "merit" increases to elected officers;
 - c. Discontinue the practice of granting any increases, including automatic cost-of-living increases linked to Unit 9A and Unit 9 MOU negotiations, without proper public

disclosures at noticed regular meetings of the City Council.

Prepared by: Liz Brown, Human Resource Director
Prepared by: Nadine Nader, Assistant City Manager
Approved by: Brian Doyle, City Attorney
Approved by: Deanna Santana, City Manager

ATTACHMENTS

1. City Charter Sections 600, 702, 903, 906, 1101
2. Salary Setting Committee: City Council Agenda Report, 1990
3. Salary and Benefit Program for Elected Chief of Police: City Council Agenda Report, February 15, 1994
4. Approval of Chief of Police Salary and Benefits: City Council Agenda Report July 5, 1994
5. Council Delegation of Authority to City Manager: City Council Agenda Report May 20, 2014
6. Proposed Merit Increase for City Attorney and Note and File actions: City Council Agenda Report October 27, 2015